

CLASS ACTION SETTLEMENT AGREEMENT

1. RECITALS

1.1 This Settlement Agreement is entered into by Class Counsel and the Class Representatives on behalf of the Class Members, and Mondelēz Global LLC, as successor in interest to Defendant Clif Bar and Company (“Clif Bar”) (collectively, the “Parties”). Capitalized terms used herein are defined in Section 2 of this Settlement Agreement or indicated in parentheses.

1.2 Subject to Court approval, the Parties stipulate and agree that, in consideration for the promises and covenants set forth in this Settlement Agreement and upon entry by the Court of a Final Judgment and Order Approving Settlement and the occurrence of the Effective Date, the Action shall be settled and compromised upon the terms and conditions contained herein.

1.3 WHEREAS, on April 19, 2018, Ralph Milan, Sarah Aquino, and Elizabeth Arnold (“Plaintiffs”) filed a class action complaint against Clif Bar in the United States District Court for the Northern District of California, captioned *Ralph Milan et al. v. Clif Bar & Company*, Case No. 18-cv-02354-JD (the “Action”), on behalf of themselves and a class of all persons in the United States (or alternatively, California and New York) who purchased the Class Products;

1.4 WHEREAS, on September 3, 2021, the Court dismissed Ms. Aquino without prejudice from the Action for lack of prosecution and subsequently relieved Class Counsel as her counsel in the Action;

1.5 WHEREAS, on September 27, 2021, the Court certified a California Clif Bar class, a New York Clif Bar class, a California Kid Clif ZBar class, and a New York Clif Kid ZBar class, and has not certified any nationwide class;

1.6 WHEREAS, on March 29, 2023, the Court issued an order finding that a nationwide Settlement Class may be certified in this Action for settlement purposes consistent with *In re Hyundai and Kia Fuel Economy Litigation*, 926 F.3d 539, 562-566 (9th Cir. 2019);

1.7 WHEREAS, Clif Bar denies all allegations in the Action;

1.8 WHEREAS, Plaintiffs and Class Counsel have determined that a settlement of the Action on the terms reflected in this Settlement Agreement is fair, reasonable, adequate, and in the best interests of Plaintiffs and the Settlement Class; and

1.9 WHEREAS, Clif Bar, to avoid costs, disruption and distraction of further litigation, and without admitting the truth of any allegations made in or related to the Action, or any liability with respect thereto, has concluded that it is desirable that the claims against it be settled and resolved on the terms in this Settlement Agreement.

1.10 NOW, THEREFORE, this Settlement Agreement is entered into by and among the Parties, by and through their respective counsel and representatives, and the Parties agree that: (1) upon the Effective Date, the Action and all Released Claims shall be fully, finally, and forever settled and compromised as between Plaintiffs and the Settlement Class on the one hand, and Clif

Bar on the other hand; and (2) upon final approval of the Settlement Agreement, the Final Judgment and Order Approving Settlement shall be entered dismissing the Action with prejudice and releasing all Released Claims against the Released Parties.

2. DEFINITIONS

As used in this Settlement Agreement and the attached Exhibits, the following terms shall have the meanings set forth below unless this Settlement Agreement specifically provides otherwise:

2.1 “Action” means *Ralph Milan et al. v. Clif Bar & Company*, Case No. 18-cv-02354-JD (N.D. Cal.).

2.2 “Cash Payment” means the cash settlement awards paid to eligible Claimants as set forth in Section 4 of this Settlement Agreement.

2.3 “Claim” means a request for a Cash Payment on a Claim Form submitted to the Settlement Administrator in accordance with the terms of this Settlement Agreement.

2.4 “Claim Deadline” means the date by which all Claim Forms must be postmarked or submitted online to the Settlement Administrator to be considered timely. The Claim Deadline shall be ten (10) days after the date first set by the Court for the Final Approval Hearing unless the Parties agree to a longer period.

2.5 “Claim Form” means the document to be submitted by a Claimant requesting a Cash Payment.

2.6 “Claimant” means a Class Member who submits a Claim.

2.7 “Class” or “Settlement Class” means all persons who, during the “Class Period” (as defined below), purchased in the United States, for household use and not for resale or distribution, one of the Class Products, as defined below. Excluded from the Settlement Class are: (a) Clif Bar’s board members or executive-level officers including its attorneys; (b) governmental entities; (c) the Court, the Court’s immediate family, and the Court’s staff; and (d) any person that timely and properly excludes himself or herself from the Settlement Class in accordance with Section 7 of this Settlement Agreement or as approved by the Court.

2.8 “Class Counsel” or “Plaintiffs’ Counsel” means the attorneys of record for the Class Representatives and Class in the Action, namely Fitzgerald Joseph LLP.

2.9 “Class Member” means a member of the Settlement Class.

2.10 “Class Member Household” means all persons who share a single physical address. For all persons who are a legal entity, such as a corporation, partnership, business organization or association, or any other type of legal entity, there can be only one physical address for purposes of this Settlement, even if the entity has multiple offices or locations.

2.11 “Class Notice” means, collectively, the Long-form Notice, Short-form Notice, Email Notice, Postcard Notice, Internet Banner Advertisements, and Media Notice discussed in Section 4 of this Settlement Agreement.

2.12 “Class Notice Program” means the Court-approved plan for disseminating Class Notice.

2.13 “Class Period” means:

2.13.1. For Class Members in California and New York, April 19, 2014, to March 31, 2023.

2.13.2. For Class Members outside of California and New York, March 31, 2019 through March 31, 2023.

2.14 “Class Products” means original Clif Bars in packaging bearing the phrase “Nutrition for Sustained Energy,” and Clif Kid ZBars in packaging bearing the Challenged Claims (as identified in the Complaint in the Action).

2.15 “Class Representatives” or “Plaintiffs” means Ralph Milan and Elizabeth Arnold.

2.16 “Common Fund” or “Settlement Fund” means the qualified settlement fund this Settlement Agreement obligates Clif Bar to fund in the amount of Twelve Million Dollars (\$12,000,000), which is in the form of a non-reversionary Common Fund and is established in accordance with 26 C.F.R. §§ 1.468B-1(c) and (e)(1).

2.17 “Complaint” means the Class Action Complaint filed in the Action on April 19, 2018 [Docket No. 1].

2.18 “Court” means the United States District Court for the Northern District of California, the Honorable James Donato presiding, or any judge who will succeed him as the judge in the Action.

2.19 “Cy Pres Recipients” means (i) the Resnick Center for Food Law and Policy at the University of California, Los Angeles, School of Law, and (ii) Tufts University Friedman School of Nutrition Science & Policy, or, if not approved by the Court, one or more other Court-approved nonsectarian, not-for-profit organizations whose work is sufficiently tethered to the allegations in this Action.

2.20 “Defendant” or “Clif Bar” means Clif Bar & Company.

2.21 “Defendant’s Counsel” or “Clif Bar’s Counsel” means David T. Biderman and Jasmine W. Wetherell of Perkins Coie LLP and Christopher Van Gundy and Khirin A. Bunker of Sheppard, Mullin, Richter & Hampton, LLP.

2.22 “Direct Notice” means distribution of Class Notice by email (if an email address is available) or if not, by first class mail through the United States Postal Service to Class Members who can be identified in the records of third-party retailers, Clif Bar, or otherwise.

2.23 “Effective Date” means the date on which the Judgment becomes final. For purposes of this definition, the Judgment shall become final on the later in time of: (a) if no appeal has been taken from the Judgment, the date on which the time to appeal has expired; or (b) if an appeal from the Judgment is filed, and the Judgment is affirmed or the appeal dismissed, the date of such affirmance or dismissal; or (c) if a petition for certiorari seeking review of the appellate judgment is filed and denied, the date the petition is denied; or (d) if a petition for writ of certiorari is filed and granted, the date of final affirmance or final dismissal of the review proceeding initiated by the petition for a writ of certiorari; or (e) if Class Counsel and Defendant agree in writing, any other agreed date that is earlier than the Effective Date as calculated according to subparagraphs (a) - (d) above.

2.24 “Fee Award” means the amount of attorneys’ fees and reimbursement of expenses and costs awarded by the Court to Class Counsel, which will be paid out of the Common Fund, as set forth in Section 9 of this Settlement Agreement.

2.25 “Final Approval Hearing” means the hearing to be conducted by the Court on such date as the Court may order to determine the fairness, adequacy, and reasonableness of the Settlement Agreement.

2.26 “Final Judgment and Order Approving Settlement” means, collectively, the Final Judgment and Final Order Approving Settlement to be entered by the Court approving the settlement as fair, adequate, and reasonable, confirming the certification of the Settlement Class, and issuing such other findings and determinations as the Court and/or the Parties deem necessary and appropriate to implement the Settlement Agreement. The Final Judgment and Order Approving Settlement shall be substantially in the form of Exhibits 2 and 3 or as otherwise modified by the Court or the Parties.

2.27 “Internet Banner Advertisements” means the form of online legal notice, as approved by the Court, containing a hyperlink to the Claim Form section of the Settlement Website, to be distributed by the Settlement Administrator according to the Class Notice Program.

2.28 “Long-form Class Notice” means the legal notice of the terms of the proposed Settlement, as approved by the Court, to be distributed according to the Class Notice Program. The Long-form Class Notice shall be substantially in the form of Exhibit 4, or as otherwise modified by the Court.

2.29 “Media Notice” means the form of notice, as approved by the Court, to be distributed by the Settlement Administrator according to the Class Notice Program.

2.30 “Net Fund” means the amount of the Common Fund remaining after deducting the amount of the Fee Award and the costs of class notice.

2.31 “Notice and Claim Administration Expenses” means costs and expenses incurred by the Settlement Administrator, including all notice expenses, the costs of administering the Class Notice Program, and the costs of processing and distributing all the Cash Payment to Claimants.

2.32 “Notice Date” means the date by which the Settlement Administrator shall commence dissemination of the Class Notice, which shall be within twenty-one (21) days from

the Preliminary Approval Order, unless the Parties agree to a different date, subject to Court approval.

2.33 “Objection Date” means the date by which Class Members must file and serve objections to the Settlement Agreement and shall be no later than eighty-one (81) days after the Settlement Notice Date, or another time set by the Court.

2.34 “Opt-Out Date” means the postmark date by which a Request for Exclusion must be submitted to the Settlement Administrator, and shall be no later than eighty-one (81) days after the Settlement Notice Date, or another time set by the Court.

2.35 “Parties” means the Plaintiffs and Defendant in this Action.

2.36 “Preliminary Approval Order” means the order to be entered by the Court conditionally certifying the Settlement Class, preliminarily approving the Settlement Agreement, setting the date of the Final Approval Hearing, appointing Class Counsel for the Settlement Class, appointing Class Representatives for the Settlement Class, approving the Class Notice Program and forms of Class Notice, and setting the Opt-Out Date, Objection Date, and Notice Date. The Preliminary Approval Order shall be substantially in the form of Exhibit 1 or as otherwise modified by the Court or the Parties.

2.37 “Proof of Purchase” means a receipt or retailer record showing the Claimant purchased the Class Product during the Class Period and the amount purchased.

2.38 “Publication Notice” means distribution of the Class Notice, including through the Media Notice and Internet Banner Advertisements.

2.39 “Released Claims” means, with the exception of claims for personal injury, any and all claims or causes of action, whether known or unknown, that were or could have been asserted in the Action, which arise from Plaintiffs’ allegations that Clif Bar’s labeling, packaging, marketing and/or advertising of Class Products was misleading or deceptive due to the added sugar content of the Class Products. Class Members are releasing claims based only on the identical factual predicate set forth in the Complaint and nothing further.

2.40 “Released Party” or “Released Parties” means Defendant and its parents (including past, current, or future parent companies, whether intermediate or ultimate parents), subsidiaries, divisions, departments, agents, and affiliates, and any and all of its past, present, or future officers, directors, employees, stockholders, agents, successors, attorneys, insurers, representatives, licensees, licensors, subrogees, and assigns including but not limited to third party distributors or sellers of the Class Products, but only with respect to Released Claims.

2.41 “Releasing Party” means Plaintiffs and each Class Member.

2.42 “Request for Exclusion” means the written communication that must be submitted to the Settlement Administrator and postmarked on or before the Opt-Out Date by a Class Member who wishes to be excluded from the Settlement Class. A Request for Exclusion form shall be made available on the Settlement Website where it can also be submitted.

2.43 “Service Award” means any award approved by the Court that is payable to the Class Representatives from the Common Fund.

2.44 “Settlement Administrator” means Postlethwaite & Netterville, APAC, the entity retained by the Parties and approved by the Court to design, consult on, and implement the Class Notice Program for disseminating Class Notice, administer and send the Cash Payment to eligible Claimants, and perform overall administrative functions.

2.45 “Settlement Agreement” or “Settlement” means this Settlement Agreement (including all Exhibits attached to this Settlement).

2.46 “Settlement Costs” means: (i) all Notice and Claim Administration Expenses; (ii) any Fee Award approved by the Court; and (iii) any Service Award approved by the Court.

2.47 “Settlement Website” means the Internet website to be created and maintained for this settlement by the Settlement Administrator to provide information to the public and the Settlement Class about this Settlement Agreement.

2.48 “Short-form Class Notice” means the shortened form of the legal notice of the terms of the proposed Settlement, as approved by the Court, to be distributed according to the Class Notice Program. The Short-form Class Notice shall be substantially in the form of Exhibit 5, or as otherwise modified by the Court.

Capitalized terms used in this Settlement Agreement, but not defined in Section 2, shall have the meanings ascribed to them elsewhere in this Settlement Agreement.

3. CLASS CERTIFICATION AND COMPLAINT

3.1 Stipulation to Class Certification for Settlement Purposes Only. For the purposes of this Settlement Agreement, the Parties stipulate and agree that the Settlement Class should be certified. Such certification is for settlement purposes only, and has no effect for any other purpose. The certification of the Settlement Class shall be binding only with respect to this Settlement Agreement. Defendant consents, solely for purposes of settlement, to the certification of the Settlement Class, to the appointment of Class Counsel, and to the approval of Plaintiffs as suitable representatives of the Settlement Class; provided, however, that if the Court fails to approve this Settlement Agreement or the Settlement Agreement otherwise fails to be consummated, then Defendant shall retain all rights it had, including the right to object to the maintenance of the Action as a class action.

3.2 Preliminary Approval. After executing this Settlement Agreement, Class Counsel and Class Representatives will move the Court for entry of the Preliminary Approval Order. In the Motion for the Preliminary Approval Order, Plaintiffs will request that the Court grant preliminary approval of the proposed Settlement, provisionally certify the Class for settlement purposes and appoint Class Counsel and Class Representatives, approve the proposed forms of Notice, find that the Notice Plan satisfies Due Process and Rule 23 of the Federal Rules of Civil Procedure, and schedule a hearing to determine whether the Settlement should be granted final approval, and whether an application for a Fee Award and Service Awards should be granted.

3.3 Final Approval. A Final Approval Hearing shall be scheduled as soon as practicable, subject to the calendar of the Court, but no sooner than one hundred and thirteen (113) calendar days after the Preliminary Approval Date. If the Court issues the Preliminary Approval Order and all other conditions precedent of the Settlement have been satisfied, no later than fourteen (14) calendar days before the Final Approval Hearing and eighteen (18) calendar days after the Objection Date, Class Counsel and Class Representatives will make a Motion for a Final Approval, seeking an Order that grants final approval of this Settlement Agreement, finally certifies the Settlement Class, authorizes the Settlement Administrator to administer the Settlement benefits to members of the Settlement Class, authorizes the creation of the qualified settlement fund by the Class Administrator to receive payments under this Settlement Agreement, awards a Fee Award and the Service Awards, rules on timely objections to the Settlement Agreement (if any), and authorizes the entry of a final judgment and dismissal of the Action with prejudice.

3.4 Subpoenas to Non-Party Retailers. No later than seven (7) calendar days after the Preliminary Approval Date, unless otherwise ordered by the Court, Class Counsel shall issue subpoenas to Walmart, Target, Kroger, and Amazon (the “Non-Party Retailers”) to obtain Class Member contact information (“Class Member Data”) sufficient to provide direct notice of this Settlement to as many Class Members as practicable. Notwithstanding the timeline limitation set forth in Section 3.3 above, the hearing on the Motion for Final Approval Order and Judgment may be set, or continued as necessary, to allow time for Class Counsel to obtain the Class Member Data. The Class Member Data shall be provided directly to the Settlement Administrator, not to Class Counsel or Defendant’s Counsel, and shall be collected and maintained in compliance with the Northern District of California’s Settlement Administration Data Protection Check List.

3.5 The Parties agree that Clif Bar may submit a motion, brief, or other materials to the Court related to preliminary approval, notice, class certification, attorneys’ fees, expenses, final approval, service awards, claim administration, or objections.

4. SETTLEMENT RELIEF

4.1 Common Fund. As set forth in Section 4.3 below, Clif Bar agrees to establish a Common Fund of Twelve Million Dollars (\$12,000,000), and shall pay such amounts into a qualified settlement fund at the Fund Institution, such fund to be established to meet the requirements applicable to a qualified settlement fund pursuant to Treasury Regulations Section 1.463B, subject to the following limitations and conditions. The Common Fund shall be used to pay all Settlement expenses, including Notice and Other Administrative Costs; Fee Award; Service Awards; and Class Members’ Claims.

4.2 Creation and Administration of Common Fund. The Class Administrator is authorized to establish the Common Fund pursuant to 26 C.F.R. Sections 1.468B-1(c) and (e)(1), to act as the “administrator” of the Common Fund pursuant to 26 C.F.R. Section 1.468B- 2(k)(3), and to undertake all duties as administrator in accordance with the Treasury Regulations promulgated under Section 1.468B of the Internal Revenue Code of 1986. All costs incurred by the Class Administrator operating as administrator of the Common Fund shall be construed as costs of Claims Administration and shall be borne solely by the Common Fund. Interest on the Common Fund shall inure to the benefit of the Class.

4.3 Clif Bar Payments into the Common Fund. Clif Bar shall make payments into the Common Fund in the amounts and by the dates specified in Sections 4.13.2 and 6.4, but in any event, no later than ten (10) bank days after the Effective Date, Clif Bar shall make any additional payments into the Common Fund such that the total payments amount to Twelve Million Dollars (\$12,000,000). This deadline may be extended by mutual consent of the Parties.

4.4 Clif Bar's Maximum Liability Under this Settlement Agreement. In no circumstances shall Clif Bar's total contribution to or liability for the Common Fund exceed Twelve Million Dollars (\$12,000,000.00). Under this Settlement Agreement, the Parties agree that the Common Fund encompasses the full extent of Clif Bar's monetary payments due under this Settlement Agreement. These payments, pursuant to the terms and conditions of this Settlement Agreement, will be in full satisfaction of all Released Claims.

4.5 Return of Common Fund. In the event the Effective Date does not occur because preliminary approval or final approval are denied or reversed on appeal, all amounts paid into the Common Fund, less amounts incurred for the Notice and Other Administrative Costs, shall be returned to Clif Bar, its successor or assigns within ten (10) bank days, and this Action shall revert to the status that existed as of May 26, 2022 except as otherwise ordered by the Court or agreed to by the Parties.

4.6 Injunctive Relief. Beginning no later than twelve (12) months following the Effective Date, and for a period of at least twenty-four (24) months thereafter, Clif Bar will revise the packaging and labels of the original Clif Bars and Clif Kid ZBars, including both the outer box packing and individual bar wrapper. Clif Bar agrees to the following labeling practices, applicable to any Class Product so long as 10% or more of its calories come from added sugars.

4.6.1. The revisions to the product labeling are as follows:

(a) Original Clif Bars: Clif Bar will not use the word "Nutrition" (including "Nutritious").

(b) Clif Kid ZBars: Clif Bar will not use the word "Nutritious," or the phrase "Nourishing Kids in Motion."

4.6.2. The twenty-four (24) months' time period described in Section 4.7 will begin on the date Clif Bar or co-packers on behalf of Clif Bar begin production of product with the revised product packaging (at which time Clif Bar shall give Class Counsel written notice of the commencement of the 24-month period). Clif Bar will be permitted to sell through all existing product and packaging inventory produced before the date of the aforementioned labeling changes, *i.e.*, need not recall or destroy packaging already in the marketplace, in its stock or its customer's stock, or printed.

4.6.3. Clif Bar reserves the right to begin these labeling changes before entry of the Final Approval Order and Judgment. The time periods noted in this Section refer to actual production by Clif Bar (or one or more of the co-packers on behalf of Clif Bar).

4.7 Eligibility for Cash Payment. To be eligible for a Cash Payment, a Class Member must fill out and submit a Claim Form, completed online or in hard copy mailed to the Class

Administrator. A maximum of one Claim Form may be submitted for each household. The Claim made via the Claim Form will proceed through the general steps described in Section 5 below. The Class Administrator shall be responsible for reviewing all Claims to determine their validity. Claims that are not rejected by the Class Administrator shall constitute Approved Claims.

4.8 The Cash Payment. Class Members who submit a timely valid Claim Form will receive a Cash Payment. Cash Payments shall be distributed to Class Members as follows, subject to pro rata increase or decrease as described in Section 4.10:

- a. Class Members, whether or not they provide Proof of Purchase, may receive:
 - i. Five dollars (\$5) if they purchased up to 30 bars;
 - ii. Ten dollars (\$10) if they purchased between 31 and 60 bars; and
 - iii. Fifteen dollars (\$15) if they purchased more than 60 bars.
- b. Class Members who provide Proof of Purchase may receive \$15 for the first 60 bars plus twenty-five cents (\$0.25) for each additional bar up to a maximum recovery of fifty dollars (\$50), (i.e., if there is proof of purchase for 75 bars, that claimant may receive $\$15 + 15 \times \$0.25 = \$18.75$).
- c. For purposes of making claims “bars” are counted individually, whether purchased individually or in multi-packs (i.e., a 12-pack counts as 12 bars). The claim form and/or process will assist Class Members in estimating the number of bars purchased.

4.9 Pro Rata Adjustments. If the total value of all approved Claims either exceeds or falls short of the funds available for distribution to Class Members, then the amounts of the cash payments will be reduced or increased *pro rata*, as necessary, to use all funds available for distribution to Class Members. Any such *pro rata* adjustment will be calculated prior to distribution of funds to any Class Member with an Approved Claim (i.e., will be made in a single distribution).

4.10 Method of Distribution of Cash Payments. The Parties shall work with the Class Administrator to choose one or more manners of payment that are secure, cost-effective, and convenient for Claimants.

4.11 Uncleared Payments: Second Distribution and Cy Pres. Those Class Members whose payments are not cleared within one hundred and twenty (120) calendar days after issuance will become ineligible to receive a Cash Payment and the Class Administrator will have no further obligation to such Class Member to make any Cash Payment from the Common Fund pursuant to this Settlement Agreement or otherwise. Any funds that remain unclaimed or remain unused after the initial distribution will be distributed to Class Members who cashed the initial payment, on a *pro rata* basis, to the extent the cost of such redistribution is considered economical by the Class Administrator, Class Counsel, and Clif Bar. If such redistribution is not considered economical, or if unpaid funds remain after a second distribution, any unpaid funds will be donated in equal shares to the Cy Pres Recipients.

4.12 Taxes on Distribution. Any person who receives a Cash Payment will be solely responsible for any taxes or tax-related expenses owed or incurred by that person by reason of that Cash Payment. Such taxes and tax-related expenses will not be paid from the Common Fund. In no event will Clif Bar, the Class Representatives, Class Counsel, the Class Administrator, or any of the Released Parties, have any responsibility or liability for taxes or tax-related expenses arising in connection with the issuance of Cash Payments or other payments made from the Common Fund to Class Representatives, Settlement Class Members, or any other person or entity.

4.13 Release of the Common Fund

4.13.1. Plaintiffs' Motion for a Fee Award and Service Award shall be filed at least thirty-five (35) days before the deadline for objecting to the Settlement.

4.13.2. Within fourteen (14) days following entry of a Final Approval Order, the Defendant shall pay into the Common Fund, and the Settlement Administrator shall pay to Class Counsel from the Common Fund their Fee Award as awarded by the Court, provided that Class Counsel shall be obligated to return to the Common Fund any fees or expenses if the amount awarded by the Court is reduced prior to the Effective Date.

4.13.3. No later than ten (10) bank days after the Effective Date, calculated assuming there are no appeals, Defendant shall deposit the amount of the Net Fund into the Common Fund.

4.13.4. The Class Administrator shall pay out Approved Claims in accordance with the terms of this Agreement commencing within thirty (30) calendar days after the Effective Date, or as otherwise ordered by the Court.

4.13.5. Within twenty-one (21) days after distribution of the Cash Payment to Claimants, the Parties will cooperate in filing a Post-Distribution Accounting as described in the Northern District's Procedural Guidance for Class Action Settlements and in the Court's Standing Order for Civil Cases.

5. CLAIM FORM SUBMISSION, REVIEW AND PAYMENT

5.1 To be eligible to receive the Cash Payment, Class Members must submit a valid and timely Claim Form. Claim Forms may be submitted either by mail or electronically through the Settlement Website and if submitted by mail must be postmarked or submitted electronically on or before the Claim Deadline.

5.2 Claim Forms will be available for online submission on the Settlement Website, available for download from the Settlement Website, and upon request, will be mailed or emailed to Class Members by the Settlement Administrator. Hard copy Claim Forms may be submitted to the Settlement Administrator by U.S. mail or other regularly maintained mail delivery service.

5.3 The Settlement Administrator shall review Claims to determine if the Claimant has substantially complied with the instructions on the Claim Form and process the Claim accordingly. The Class Administrator shall reject any Claim that does not comply in any material respect with the instructions on the Claim Form or with the terms of this Section; that is submitted after the

Claims Deadline; or that the Class Administrator identifies as fraudulent. The Class Administrator shall apply usual and customary standards and procedures for detecting and invalidating fraudulent claims, and retains sole discretion in accepting or rejecting Claims. For example, where a good faith basis exists, the Class Administrator may reject a Claim Form for, among other reasons: (i) failure to attest to the purchase of the Class Products for personal, family or household use; (ii) failure to provide adequate verification or additional information about the Claim pursuant to a request of the Class Administrator; (iii) failure to fully complete and/or sign the Claim Form; (iv) failure to submit a legible Claim Form; (v) submission of a fraudulent Claim Form; (vi) submission of a Claim Form that is duplicative of another Claim Form; (vii) submission of a Claim Form by a person who is not a member of the Settlement Class; (viii) submission of claims forms that have indicia of fraud, including without limitation, multiple submissions from the same mailing or internet protocol address, or submissions in a method that has previously been deemed fraudulent; (ix) failure to submit a Claim Form by the end of the Claim Period; or (x) failure to otherwise meet the requirements of this Agreement for making a Claim. Unless otherwise ordered by the Court, the Class Administrator shall have no obligation to advise Claimants with invalid claims that their claims have been rejected.

5.4 Failure to provide all information requested in the Claim Form will not automatically result in nonpayment of the Claim. Instead, the Settlement Administrator will take all adequate and customary steps to determine the Class Member's eligibility for payment based on the information contained in the Claim Form, and such other reasonably available information from which eligibility for settlement benefits can be determined.

5.5 The Settlement Administrator's review of Claims will be in accordance with standard fraud detection practices regularly employed by the Settlement Administrator to prevent the approval and payment of Claims that are fraudulent or invalid.

6. ADMINISTRATION AND CLASS NOTICE

6.1 Settlement Administrator

6.1.1. Subject to Court approval, the Parties shall retain Postlethwaite & Netterville, APAC, or another firm approved by the Court, as Settlement Administrator, to help implement the terms of the Settlement Agreement.

6.1.2. The Settlement Administrator will be tasked with conducting matters relating to the administration of this Settlement Agreement, as set forth herein. Those responsibilities include, but are not limited to: (i) arranging for dissemination of the Publication Notice and Direct Notice compliant with Rule 23 and approved by the Court; (ii) mailing or arranging for the mailing, emailing or other distribution of the Class Notice and the Cash Payment to Claimants; (iii) handling returned mail and email not delivered to Class Members; (iv) making any additional mailings required under the terms of this Settlement Agreement; (v) answering written inquiries from Class Members and/or forwarding such inquiries to Class Counsel or their designee; (vi) receiving and maintaining on behalf of the Court and the Parties any Class Member correspondence and Requests for Exclusion from the Settlement; (vii) establishing the Settlement Website that posts the operative complaint, Settlement Agreement, the Class Notice, and other related

documents; (viii) sending notification of any deficiency in any Claim Form to permit a Claimant to cure any such deficiency; (ix) establishing and maintaining a toll-free telephone number that will provide settlement-related information to Class Members; (x) receiving and processing (including monitoring for fraud and validating or rejecting) Class Member Claims and distributing Cash Payments to Class Members; (xi) providing regular updates on the claims status to counsel for all Parties; and (xii) otherwise assisting with administration of the Settlement Agreement.

6.1.3. The contract with the Settlement Administrator shall obligate the Settlement Administrator to abide by the following performance standards: (1) The Settlement Administrator shall accurately and neutrally describe, and shall train and instruct its employees and agents to accurately and objectively describe, the provisions of this Settlement Agreement in communications with Class Members; and (2) The Settlement Administrator shall provide prompt, accurate and objective responses to inquiries from Class Counsel or their designee, Clif Bar and/or Clif Bar's Counsel.

6.2 Class Notice

6.2.1. Class Notice: The Class Notice forms will include a Long-form Class Notice, Postcard Notice, and the Internet Banner Advertisements and Media Notice disseminated in connection with the Publication Notice.

6.2.2. Long-form and Short-form Notice: The Long-form Notice shall be available on the Settlement Website in English and Spanish and shall be available to be sent to Class Members at their request. The Long-form Class Notice shall be substantially in the form of Exhibit 4, or as otherwise modified by the Court. Where Class Notice is being made in printed forms where the Long-form Notice is impracticable, a Short-form Notice substantially in the form of Exhibit 5, or as otherwise modified by the Court, may be used.

6.2.3. Internet Banner Advertisements: The Settlement Administrator will design and implement a geographic and contextual targeting digital and social media campaign that utilizes Internet Banner Advertisements that contain an embedded hyperlink directing Class Members directly to the Claim Form link on the Settlement Website.

6.2.4. Website: The Settlement Website shall be created and maintained by the Settlement Administrator. The Settlement Website shall be available in English and Spanish. The Settlement Website shall be activated no later than the Notice Date and shall remain active until sixty (60) days after the Settlement benefits are distributed to Claimants. The URL of the Settlement Website will be "www.BarsClassAction.com." The Settlement Administrator shall post the Long-form Class Notice, a copy of this Settlement Agreement and its Exhibits, the Preliminary Approval Motion, the Preliminary Approval Order, the operative complaint, the Motion for Final Approval and Motion for Fee Award and Service Award, the Final Approval Order, answers to frequently asked questions, the number for the toll-free hotline maintained by the Settlement Administrator for this Settlement, Settlement-related deadlines, and any other materials or information the Parties agree to

include on the Settlement Website. These documents shall be available on the Settlement Website for as long as the Settlement Website is active.

6.2.5. Class Action Fairness Act Notice: Clif Bar shall work with the Settlement Administrator to comply with all notice requirements imposed by 28 U.S.C. § 1715(b) (“CAFA Notice”). The Class Administrator, on behalf of Clif Bar, will serve notice upon the appropriate officials within ten (10) calendar days after the Parties file the proposed Settlement Agreement with the Court. *See* 28 U.S.C. § 1715(b). The costs of such notice will be paid from the Common Fund.

6.3 Dissemination of Class Notice

6.3.1. Direct Notice: The Email Notice or Postcard Notice (as applicable) shall be sent via email, or for those Class Members for whom an email address is not available but a physical address is available, then via the United States Postal Service, to every Class Member who can be identified in the records of (1) third-party retailers, (2) Clif Bar, or (3) otherwise, including but not limited to Class Members who directly purchased the Class Products from the *clifbar.com* website or registered a purchase of the Class Products with Clif Bar through any products reward program or otherwise. Clif Bar shall provide the Settlement Administrator with any of the aforementioned Class Member contact information it possesses. Direct Notice will be sent on the Notice Date. To facilitate Notice to the Class Members, Class Counsel shall seek an order from the Court permitting Class Counsel to serve subpoenas on certain Non-Party Retailers as set forth in further detail at Section 3.4 above.

6.3.2. Prior to the Notice Date, the Settlement Administrator shall employ its regular data processing and data cleaning procedures on the records (names/addresses) for the Direct Notice. The Settlement Administrator shall design the Direct Notice (for both delivery by U.S. mail and by email) in such a manner as to enhance the likelihood that it will be opened or viewed by the Class Member. After posting of the Postcard Notice by the Settlement Administrator with the United States Postal Service, for any such mailed notices returned as undeliverable, the Settlement Administrator shall utilize the National Change of Address registry in an attempt to obtain better addresses for such returned mail notices, and should that registry show a more current address, the Settlement Administrator shall send the returned Postcard Notice to the more current address. The Settlement Administrator will promptly resend any Postcard Notice that is returned as undeliverable with a forwarding U.S. mail or email address to such forwarding address.

6.3.3. Media Notice: The Media Notice shall be published no later than the Notice Date, with the Settlement Administrator using accepted reach methodology to reach the Settlement Class.

6.3.4. Website Notice: No later than the Notice Date, the Settlement Administrator will post the Long-form Class Notice on the Settlement Website and shall post the additional documents and information discussed in Section 6.2 above as they become available.

6.3.5. Toll-Free Telephone Number: No later than the Notice Date, the Settlement Administrator shall establish a toll-free telephone number that will provide Settlement-related information to Class Members via interactive voice recording with a live operator option.

6.4 Costs of Class Notice. All costs of providing Class Notice as provided herein, including the costs of identifying Class Members and the costs of emailing, printing, mailing, and publishing all forms of notice in accordance with this Settlement Agreement, shall be paid into the Common Fund by Clif Bar at least seven (7) days prior to the commencement of the Notice Date. The Class Administrator shall provide Clif Bar with the exact dollar amount to be paid by Clif Bar into the Common Fund for such costs at least fourteen (14) days prior to commencement of the notice.

6.5 Costs of Administering Claims. All costs of administering this Settlement Agreement, including all fees of the Class Administrator, the costs of reviewing and processing Claims, and generating and mailing any checks or issuing digital payment as part of this Settlement Agreement, shall be paid from the Common Fund after the Effective Date.

7. OBJECTIONS AND REQUESTS FOR EXCLUSION

7.1 Requests for Exclusion

7.1.1. Any member of the Settlement Class may request to be excluded from the Settlement Class. A Class Member who wishes to opt out of the Class must do so no later than the Opt-Out Date. To opt out, a Class Member must send to the Settlement Administrator a written Request for Exclusion that is postmarked no later than the Opt-Out Date. A Request for Exclusion may also be submitted at the Settlement Website by the Opt-Out Date. The Request for Exclusion must be personally signed by the Class Member and contain a statement that indicates a desire to be excluded from the Settlement Class. No person may opt out of the Settlement Class for any other person or be opted-out by any other person, and no Class Member shall be deemed opted-out of the Settlement Class through any purported “mass” or “class” opt-outs.

7.1.2. Any Class Member who does not submit a timely, written Request for Exclusion shall be bound by all subsequent proceedings, orders and the Final Judgment and Order Approving Settlement in this Action, even if he or she has pending, or subsequently initiates, litigation, arbitration, or any other proceeding against Defendant asserting the Released Claims.

7.1.3. Any Class Member who properly requests to be excluded from the Settlement Class shall not: (a) be bound by any orders or judgments entered in the Action relating to the Settlement Agreement; (b) be entitled to submit a Claim, or be affected by, the Settlement Agreement; (c) gain any rights by virtue of the Settlement Agreement; or (d) be entitled to object to any aspect of the Settlement Agreement.

7.1.4. The Settlement Administrator shall provide Class Counsel and Defendant’s Counsel with a final list of all timely Requests for Exclusion within three (3) days after the

Opt-Out Date. Clif Bar's Counsel shall file the final list of all timely Requests for Exclusion prior to or at the Final Approval Hearing.

7.2 Objections

7.2.1. Any Class Member who intends to object to the fairness of the Settlement Agreement must do so in writing no later than the Objection Date. The written objection must be filed with the Court and served on Class Counsel and Defendant's Counsel no later than the Objection Date. The written objection must include: (a) a heading which refers to the Action; (b) the objector's name, address, telephone number and if represented by counsel, the name, address, and telephone number of his/her counsel; (c) a statement under oath that the objector is a Class Member; (d) a statement of the objection and the specific grounds supporting the objection; (e) a statement whether the objection applies only to the objector, to a specific subset of the class, or to the entire class; (f) copies of any papers, briefs, or other documents upon which the objection is based; and (g) the objector's handwritten, dated signature.

7.2.2. The Parties will have the right, upon an order of the Court, to obtain document discovery from and take the deposition of any Objecting Class Member on topics relevant to the objection. The Parties shall further have the right, either jointly or individually, to respond to any objection, with a written response due the same day as the Motion for Final Approval or as otherwise ordered by the Court.

7.2.3. Absent a showing of good cause, any Class Member who fails to substantially comply with the provisions of Sections 7.1.1-2 above shall waive and forfeit any and all rights he or she may have to appear separately and/or to object and shall be bound by all of the terms of this Settlement Agreement and by all proceedings, orders, and judgments, including, but not limited to, the Release, in the Action.

8. RELEASES

8.1 Upon the Effective Date, each and every Releasing Party shall by order of this Court be deemed to have released, waived, forfeited and shall be permanently barred and enjoined from initiating, asserting, and/or prosecuting any Released Claim against any Released Party in any court or any forum.

8.2 In consideration for the Settlement Agreement, Defendant parents (including past, current, or future parent companies, whether intermediate or ultimate parents), subsidiaries, divisions, departments, agents, and affiliates, and any and all of its past, present, or future officers, directors, employees, stockholders, agents, successors, attorneys, insurers, representatives, licensees, licensors, subrogees, and assigns shall be deemed to have, and by operation of the Final Approval Order and Judgment shall have, released Class Counsel and Class Representatives from any and all claims relating to the prosecution of the Action.

To the extent permitted by law, this Settlement Agreement may be pleaded as a full and complete defense to, and may be used as the basis for an injunction against, any action, suit, or other proceeding that may be instituted, prosecuted, or attempted in breach of or contrary to this

Settlement Agreement, or any other action or claim that arises out of the identical factual predicate or same set of operative facts as this Action.

8.3 The Court shall retain exclusive and continuing venue and jurisdiction over the Parties and the Class Members to interpret and enforce the terms, conditions, and obligations under the Settlement Agreement, and any disputes over such issues shall be brought in this Court.

9. ATTORNEYS' FEES AND EXPENSES AND PLAINTIFF SERVICE AWARDS

9.1 Plaintiffs and/or Class Counsel shall make an application for an award of attorneys' fees and for reimbursement of its reasonable out-of-pocket expenses. The Fee Award will be paid from the Common Fund.

9.2 Plaintiffs and/or Class Counsel will apply for Class Representative Service Awards. Any Court-approved Service Award is in addition to the benefits that the Class Representatives are entitled to receive as members of the Settlement Class. The Court-approved Service Awards will be paid from the Common Fund. The Service Awards shall be paid to the Class Representatives within seven (7) days of the Effective Date.

9.3 Defendant may independently review any application for a Fee Award or Service Award and may in good faith submit objections to such awards.

9.4 The Court's determination of the Fee Award and Service Awards will not affect the remainder of the Settlement.

10. FINAL JUDGMENT AND ORDER APPROVING SETTLEMENT

10.1 This Settlement Agreement is subject to and conditioned upon the issuance by the Court of the Final Judgment and Order Approving Settlement that finally certifies the Class for the purposes of this Settlement, grants final approval of the Settlement Agreement, and provides the relief specified herein. Such Final Judgment and Order Approving Settlement shall be substantially in the form attached hereto as Exhibits 2 and 3.

11. NO ADMISSION OF LIABILITY/FOR SETTLEMENT ONLY

11.1 This Settlement Agreement reflects the compromise and settlement of disputed claims among the Parties and is for settlement purposes only. Neither the fact of, or any provision contained in this Settlement Agreement or its Exhibits, nor any action taken hereunder, shall constitute, be construed as, or be admissible in evidence as an admission of: (a) the validity of any claim or allegation by Plaintiffs, or of any defense asserted by Clif Bar, in the Action or any other action or proceeding; or (b) any wrongdoing, fault, violation of law, or liability of any kind on the part of any Party, Defendant, Released Party, or their respective counsel.

11.2 The terms of this Settlement Agreement are not, and should not be construed as, an admission of liability or wrongdoing on the part of Clif Bar.

12. TERMINATION OF THIS SETTLEMENT AGREEMENT

12.1 Any Party may terminate this Settlement Agreement by providing written notice to the other Parties within ten (10) days of any of the following events:

12.1.1. The Court does not enter a Preliminary Approval Order; or

12.1.2. The Court does not enter a Final Judgment and Order Approving Settlement, or if entered, such Final Judgment and Order Approving Settlement is reversed, vacated, or modified in any material respect by another court.

12.2 In the event that this Settlement Agreement terminates for any reason, all Parties shall be restored to their respective positions as of the date of execution of the Settlement Agreement. In no event will Defendant be entitled to recover any funds spent for Notice and Claim Administration Expenses prior to termination of this Settlement Agreement.

13. ADDITIONAL PROVISIONS

13.1 Entire Settlement Agreement: The Settlement Agreement, including all Exhibits, shall constitute the entire Settlement Agreement among the Parties with regard to the Action and shall supersede any previous settlement agreements, terms sheets, representations, communications, and understandings among the Parties with respect to the subject matter of the Settlement Agreement.

13.2 Execution in Counterparts: The Settlement Agreement may be executed by the Parties in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. Facsimile signatures or signatures sent by email shall be treated as original signatures and shall be binding.

13.3 Notices: Whenever this Settlement Agreement requires or contemplates that one Party shall or may give notice to the other, notice shall be provided in writing by first class U.S. Mail and email to:

Class Counsel

Jack Fitzgerald

jack@fitzgeraldjoseph.com

Fitzgerald Joseph LLP

2341 Jefferson Street, Suite 200

San Diego, CA 92110

Clif Bar Co-Counsel

David T. Biderman

dbiderman@perkinscoie.com

Perkins Coie LLP

1888 Century Park East, Suite 1700

Los Angeles, California 90067

Tel: 310-788-9900

Clif Bar Co-Counsel

Christopher Van Gundy
cvangundy@sheppardmullin.com
Sheppard, Mullin, Richter & Hampton, LLP
Four Embarcadero Center, Suite 1700
San Francisco, CA 94111

13.4 Good Faith: The Parties agree that they will act in good faith and will not engage in any conduct that will or may frustrate the purpose of this Settlement Agreement. The Parties further agree, subject to Court approval as needed, to reasonable extensions of time to carry out any of the provisions of the Settlement Agreement.

13.5 Publicity: To the extent Defendant or Plaintiffs make any public statements regarding the Settlement of this Action, any such statements shall be consistent with the Court-approved documents that comprise this Settlement Agreement or otherwise agreed on by the Parties in writing in advance.

13.6 Binding on Successors: The Settlement Agreement shall be binding upon, may be enforced by, and inure to the benefit of the heirs, successors and/or assigns of the Released Parties.

13.7 Arms-Length Negotiations: The determination of the terms and conditions contained herein and the drafting of the provisions of this Settlement Agreement has been by mutual understanding after negotiation, with consideration by, and participation of, the Parties hereto and their counsel. This Settlement Agreement shall not be construed against any Party on the basis that the Party was the drafter or participated in the drafting. Any statute or rule of construction that ambiguities are to be resolved against the drafting party shall not be employed in the implementation of this Settlement Agreement, and the Parties agree that the drafting of this Settlement Agreement has been a mutual undertaking.

13.8 Waiver: The waiver by one Party of any provision or breach of the Settlement Agreement shall not be deemed a waiver of any other provision or breach of the Settlement Agreement.

13.9 Variance: In the event of any variance between the terms of this Settlement Agreement and any of the Exhibits hereto, the terms of this Settlement Agreement shall control and supersede the Exhibit(s).

13.10 Taxes: No opinion concerning the tax consequences of the Settlement Agreement to any Class Member is given or will be given by Defendant, Defendant's Counsel, or Class Counsel; nor is any Party or their counsel providing any representation or guarantee respecting the tax consequences of the Settlement Agreement as to any Class Member. Each Class Member is responsible for his/her tax reporting and other obligations respecting the Settlement Agreement, if any.

13.11 Modification in Writing: The Settlement Agreement may not be changed, modified, or amended except in writing, signed by one of Class Counsel and one of Clif Bar's Counsel and, if required, approved by the Court. The Parties contemplate that the Exhibits to the

Settlement Agreement may be modified by subsequent agreement of Defendant and Class Counsel so long as the modifications do not alter the substantive terms of the Settlement Agreement or reduce the rights and benefits of Class Members.

13.12 Retain Jurisdiction: The Court shall retain jurisdiction with respect to the implementation and enforcement of the terms of this Settlement Agreement, and all Parties hereto submit to the jurisdiction of the Court for purposes of implementing and enforcing the Settlement Agreement embodied in this Settlement Agreement.

13.13 Choice of Law: This Settlement Agreement is governed by and shall be construed and enforced in accordance with California, and as applicable, federal law.

13.14 Computation of Time: All deadlines and time periods prescribed in this Settlement Agreement shall be calculated pursuant to Fed. R. Civ. P. 6.

13.15 IN WITNESS WHEREOF, the Parties hereto have caused the Settlement Agreement to be executed as of the last date set forth below.

Class Representatives, on behalf of the Class

Dated: 10/31/2023

Ralph Milan

DocuSigned by:

56241A72E40A4AE...

Dated:


Elizabeth Arnold

Class Counsel

Dated: 10/31/2023

Fitzgerald Joseph, LLP

By: Jack Fitzgerald

DocuSigned by:

568092CC961748B...
Class Counsel

**Mondelēz Global LLC,
Successor in Interest to
Clif Bar and Company**

By: Gustavo Valle

Dated: 10/31/2023

/s/ Gustavo Valle

Executive Vice President North America

Class Representatives, on behalf of the Class

Dated: Ralph Milan

Dated: 10/31/2023

Elizabeth Arnold

DocuSigned by:
Elizabeth Arnold
B5C131B7BB07450...

Class Counsel

Dated: Fitzgerald Joseph, LLP

By: Jack Fitzgerald

Class Counsel

**Mondelēz Global LLC,
Successor in Interest to
Clif Bar and Company**

By: Gustavo Valle

Dated:

Executive Vice President North America

Exhibit 1

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

RALPH MILAN and ELIZABETH ARNOLD
on behalf of themselves, those similarly
situated and the general public,

Plaintiffs,

v.

CLIF BAR & COMPANY,

Defendant.

Case No. 18-cv-02354-JD

CLASS ACTION

**[PROPOSED] ORDER GRANTING
PRELIMINARY APPROVAL OF CLASS
SETTLEMENT**

Judge: Hon. James Donato

Complaint Filed: April 19, 2018

1 WHEREAS, this matter has come before the Court pursuant to Plaintiffs' Motion for
2 Preliminary Approval of Class Action Settlement (the "Motion");

3 WHEREAS, the Court finds that it has jurisdiction over the action and each of the Parties
4 for purposes of settlement and asserts jurisdiction over the Class Members for purposes of
5 effectuating this Settlement and releasing their claims¹; and

6 WHEREAS, this Court has considered all submissions related to the Motion and is otherwise
7 fully advised in the premises;

8 IT IS HEREBY ORDERED AS FOLLOWS:

9 **I. PRELIMINARY APPROVAL OF SETTLEMENT AGREEMENT**

10 1. The terms of the Settlement Agreement dated October 30, 2023, including all
11 exhibits thereto (the "Settlement Agreement"), are preliminarily approved as fair, reasonable and
12 adequate, are sufficient to warrant sending Class Notice to the Settlement Class, and are subject to
13 further consideration at the Final Approval Hearing referenced below. This Order incorporates the
14 Settlement Agreement, and its exhibits and related documents. Unless otherwise provided herein,
15 the terms defined in the Settlement Agreement shall have the same meanings in this Order.

16 2. The Settlement Agreement was entered into after extensive arm's length negotiations
17 by experienced counsel and with the assistance and oversight of several experienced mediators. The
18 Court preliminarily finds that this Settlement complies with the Northern District of California's
19 Procedural Guidance for Class Action Settlements and this Court's standard for preliminary
20 approval of class action settlements. *See Cotter v. Lyft, Inc.*, 193 F. Supp. 3d 1030, 1035-37 (N.D.
21 Cal. 2016). Further, the Court finds that the Settlement embodied in the Settlement Agreement is
22 within the range of reasonableness, so that Notice of the Settlement should be given to the Class as
23 provided in the Settlement Agreement and this Order. In making this determination, the Court has
24 considered the current posture of this litigation and the risks and benefits to the Parties involved in
25 both settlement of these claims and continuation of the litigation.

26
27
28 ¹ See *In re Hyundai & Kia Fuel Economy Litig.*, 926 F.3d 539 (9th Cir. 2019) (en banc).

1 **II. THE CLASS, CLASS REPRESENTATIVES AND CLASS COUNSEL**

2 3. The Court certifies the following Settlement Class for settlement purposes only (the
3 “Settlement Class”):

4 All persons who, during the “Class Period” (as defined in Section 2.13 of the
5 Settlement Agreement), purchased in the United States, for household use and not
6 for resale or distribution, either original Clif Bars in packaging bearing the phrase
7 “Nutrition for Sustained Energy,” or Clif Kid ZBars in packaging bearing the
8 Challenged Claims (as identified in the Complaint in the Action).²

9 4. The Court finds, for settlement purposes only that the Settlement Class meets all the
10 applicable requirements of Fed. R. Civ. P. 23(a) and (b)(3), including: (a) numerosity; (b)
11 commonality; (c) typicality; (d) adequacy of the Class Representatives and Class Counsel; (e)
12 predominance of common questions of fact and law among the Settlement Class; and (f) superiority.
13 The Court hereby provisionally certifies the Settlement Class for settlement purposes only. The
14 Court finds, in the specific context of this Settlement Agreement, that: (a) the number of Class
15 Members is so numerous that their joinder in one lawsuit would be impractical; (b) there are some
16 questions of law or fact common to the Settlement Class; (c) the claims of the Class Representatives
17 are typical of the claims of the Class Members they seek to represent; (d) the Class Representatives
18 have fairly and adequately represented the interests of the Settlement Class and the Class
19 Representatives have retained experienced counsel to represent them and the Settlement Class,
20 whom the Court finds have satisfied the requirements of Fed. R. Civ. P. 23(a)(4) and 23(g); (e) the
21 questions of law and fact common to the Settlement Class predominate over any questions affecting
22 any individual Class Member; and (f) a class action is superior to the other available methods for
23 the fair and efficient adjudication of the controversy through settlement.

24 5. The Court previously found Plaintiffs were adequate class representatives for the
25 Classes the Court certified and now designates Plaintiffs Ralph Milan and Elizabeth Arnold as Class
26 Representatives for the Settlement Class.

27 ² Excluded from the Settlement Class are: (a) Clif Bar’s board members or executive-level officers
28 including its attorneys; (b) governmental entities; (c) the Court, the Court’s immediate family, and
the Court’s staff; and (d) any person that timely and properly excludes himself or herself from the
Settlement Class.

1 6. The Court previously found Plaintiffs' counsel, Fitzgerald Joseph LLP, adequate
2 Class Counsel for the Classes the Court certified and now designates Fitzgerald Joseph LLP and its
3 attorneys Class Counsel for the Settlement Class pursuant to Fed. R. Civ. P. 23(g).

4 7. If the Settlement Agreement is not finally approved by the Court, or for any reason
5 a Final Judgment and Order Approving Settlement is not entered as contemplated in the Settlement
6 Agreement, or if the Settlement Agreement is terminated pursuant to its terms for any reason, or if
7 the Effective Date does not occur for any reason, then:

8 (a) All orders and findings entered in connection with the Settlement Agreement
9 shall become null and void and have no force or effect whatsoever, shall not be used or
10 referred to for any purposes whatsoever, and shall not be admissible or discoverable in this
11 or any other proceeding;

12 (b) The provisional certification of the Settlement Class pursuant to this Order
13 shall be vacated automatically and the Action shall proceed as though the Settlement Class
14 had never been certified;

15 (c) Nothing contained in this Order will be construed as a presumption,
16 concession or admission by or against Defendant or Class Representatives of any default,
17 liability or wrongdoing as to any facts or claims alleged or asserted in the Action;

18 (d) Nothing in this Order pertaining to the Settlement Agreement shall be used
19 as evidence in any further proceeding in the Action; and

20 (e) All of the Court's prior orders having nothing whatsoever to do with
21 certification of the Settlement Class or the Settlement Agreement shall, subject to this Order,
22 remain in force and effect.

23 **III. NOTICE TO CLASS MEMBERS**

24 8. The Court has considered the proposed Class Notice and finds that the forms of Class
25 Notice and methodology for its publication and dissemination as described in the Settlement
26 Agreement and in the Declaration of the Settlement Administrator: (a) meet the requirements of due
27 process and Fed. R. Civ. P. 23(c) and (e); (b) constitute the best notice practicable under the
28 circumstances to all persons entitled to notice; and (c) satisfy the Constitutional requirements

1 regarding notice. In addition, the forms of Class Notice: (a) apprise Class Members of the terms of
2 the proposed Settlement and their rights and deadlines under the Settlement; (b) are written in simple
3 terminology; (c) are readily understandable by Class Members; and (d) comply with the Federal
4 Judicial Center’s illustrative class action notices and the Northern District of California’s Procedural
5 Guidance for Class Actions. The Court approves, as to form and content, each of the forms of Class
6 Notice and the methodology for its publication and dissemination as described in the Settlement
7 Agreement and in the Declaration of the Settlement Administrator in all respects.

8 9. The Parties have requested three weeks before commencing Class Notice so that they
9 may serve subpoenas on the top four retailers of the Class Products (Walmart, Target, Kroger, and
10 Amazon), to obtain contact information sufficient to provide direct notice of the Settlement
11 Agreement to Class Member customers who purchased the Class Products, as defined in Section
12 2.14 of the Settlement Agreement, at any time during the Class Period, as defined in Section 2.13
13 of the Settlement Agreement. *See* Fed. R. Civ. P. 23(c)(2)(B) (Requiring “individual notice to all
14 [class] members who can be identified through reasonable effort.”). The Court approves the request
15 and hereby reopens discovery in this matter for the limited purpose of the Parties subpoenaing these
16 retailers for Class Member contact information. The Parties are directed to serve the subpoenas
17 within seven (7) days of this Order. The Court hereby orders that Class Notice be commenced within
18 twenty-one (21) days of this Order.

19 10. The Court further approves the establishment of an internet website,
20 www.BarsClassAction.com, for the Settlement by the Settlement Administrator (the “Settlement
21 Website”). The Settlement Administrator shall post on the Settlement Website the Long-form Class
22 Notice, a copy of this Settlement Agreement and its Exhibits, the Preliminary Approval Motion, the
23 Preliminary Approval Order, the operative Complaint, the Motion for Final Approval and Motion
24 for Attorneys’ Fees and Expenses, the Final Approval Order, answers to frequently asked questions,
25 the number for the toll-free hotline maintained by the Settlement Administrator for this Settlement,
26 Settlement-related deadlines, and any other materials or information the Parties agree to include on
27 the Settlement Website. These documents shall be available on the Settlement Website until sixty
28 (60) days after the Settlement benefits are distributed. The Notice and Claim Administration

1 Expenses are to be paid in accordance with the Settlement Agreement. The Parties are hereby
2 authorized to establish the means necessary to implement the Class Notice and other terms of the
3 Settlement Agreement.

4 11. The Court also permits Amazon, a third-party retailer who will receive a subpoena
5 for Class Member contact information, to send the approved Class Notice directly to the email
6 addresses associated with Amazon customers that Amazon's records indicate purchased the Class
7 Products during the Class Period. Within seven (7) days after sending the email notice, Amazon
8 shall provide the parties a declaration indicating compliance with this Order and setting forth the
9 total number of Class Members to whom it sent email notice, and the total number of those emails
10 that were delivered successfully as reported by Amazon's email server.

11 12. The Court hereby appoints Postlethwaite & Netterville, APAC ("P&N") to be the
12 Settlement Administrator. Responsibilities of the Settlement Administrator are found in the
13 Settlement Agreement.

14 **IV. REQUEST FOR EXCLUSION FROM THE SETTLEMENT CLASS**

15 13. Class Members who wish to be excluded from the Settlement Class must send to the
16 Settlement Administrator a written Request for Exclusion that is postmarked no later than eighty-
17 one (81) days after the Settlement Notice Date. A request for exclusion may also be submitted online
18 at the Settlement Website no later than eighty-one (81) days after the Settlement Notice Date (the
19 "Opt-Out Date"). The Request for Exclusion must be personally signed by the Class Member and
20 contain a statement that indicates a desire to be excluded from the Settlement Class. No person may
21 opt out of the Settlement Class for any other person or be opted-out by any other person, and no
22 Class Member shall be deemed opted-out of the Settlement Class through any purported "mass" or
23 "class" opt-outs.

24 14. Any Class Member who does not submit a timely, written Request for Exclusion
25 shall be bound by all subsequent proceedings, orders and the Final Judgment and Order Approving
26 Settlement in this Action, even if he or she has pending, or subsequently initiates, litigation,
27 arbitration, or any other proceeding against Defendant asserting the Released Claims.

28 15. Any Class Member who timely and validly excludes themselves from the Settlement

1 Class shall not: (a) be bound by any orders or judgments entered in the Action relating to the
2 Settlement Agreement; (b) be entitled to submit a Claim, or be affected by, the Settlement
3 Agreement; (c) gain any rights by virtue of the Settlement Agreement; or (d) be entitled to object to
4 any aspect of the Settlement Agreement. No later than three (3) days after the Opt-Out Date, the
5 Settlement Administrator shall provide the parties with a final list of timely Requests for Exclusion.
6 Class Counsel shall file this list in connection with the Final Approval Hearing.

7 **V. OBJECTIONS**

8 16. Any Class Member who intends to object to the fairness of the Settlement Agreement
9 must do so in writing no later than eighty-one (81) days after the Notice Date (the “Objection Date”).
10 The written objection must be filed with the Court no later than the Objection Date.

11 17. To be considered by the Court, any objection must be in writing and include the
12 following information: (a) a heading which refers to the Action (*Ralph Milan et al. v. Clif Bar &*
13 *Company*, Case No. 18-cv-02354-JD); (b) the objector’s name, address, telephone number and if
14 represented by counsel, the name, address, and telephone number of his/her counsel; (c) a statement
15 under oath that the objector is a Class Member; (d) a statement of the objection and the specific
16 grounds supporting the objection; (e) a statement whether the objection applies only to the objector,
17 to a specific subset of the Class, or to the entire Class; (f) copies of any papers, briefs, or other
18 documents upon which the objection is based; and (g) the objector’s handwritten, dated signature.

19 18. Any Class Member who files and serves a written objection, as described above, may
20 appear at the Final Approval Hearing, either in person or through counsel hired at the Class
21 Member’s expense, to object to any aspect of the fairness, reasonableness, or adequacy of the
22 Settlement Agreement. Class Members or their attorneys who intend to make an appearance at the
23 Final Approval Hearing must serve a notice of intention to appear on Class Counsel and Defendant’s
24 Counsel and file the notice of appearance with the Court, no later than seven (7) days before the
25 Final Approval Hearing. The written notice and objection requirements may be excused by the Court
26 upon a showing of good cause.

27 19. The Parties will have the right, upon an order of the Court, to obtain document
28 discovery from and take depositions of any objecting Class Member on topics relevant to the

1 objection. The Parties shall further have the right, either jointly or individually, to respond to any
2 objection, with a written response due the same day as the Motion for Final Approval.

3 20. Absent a showing of good cause, any Class Member who fails to substantially
4 comply with the provisions above shall waive and forfeit any and all rights he or she may have to
5 appear separately and/or to object and shall be bound by all of the terms of this Settlement
6 Agreement and by all proceedings, orders, and judgments, including, but not limited to, the Release,
7 in the Action.

8 **VI. FINAL APPROVAL HEARING**

9 21. The Final Approval Hearing will be held on [113 days after entry of the Preliminary
10 Approval Order, or as soon thereafter as the Court’s schedule permits] at _____ Pacific Time
11 before this Court, at the United States District Court for the Northern District of California, 450
12 Golden Gate Avenue, San Francisco, CA 94102, in Courtroom 11, on the 19th Floor, to consider,
13 *inter alia*, the following: (a) whether the Settlement Class should be certified for settlement
14 purposes; (b) whether the settlement and Settlement Agreement should be finally approved as fair,
15 reasonable and adequate; and (c) whether the Court should grant the Class Representatives’ and
16 Class Counsel’s requests for Service Awards and a Fee Award.

17 22. No later than thirty-five (35) calendar days before the Objection Date, Class Counsel
18 and the Class Representatives shall file a Motion for a Fee Award and Service Awards, which shall
19 be posted on the Settlement Website. No later than fourteen (14) calendar days before the Final
20 Approval Hearing and eighteen (18) calendar days after the Objection Date, Class Counsel and
21 Class Representatives shall make a Motion for Final Approval, seeking a final judgment and order
22 approving settlement that grants final approval of this Settlement Agreement and final certification
23 of the Settlement Class; authorizes the Settlement Administrator to administer the Settlement
24 benefits to members of the Settlement Class; authorizes the creation of the qualified Settlement
25 Fund by the Class Administrator to receive payments under this Settlement Agreement; awards a
26 Fee Award and Service Awards; rules on timely objections to this Settlement Agreement (if any);
27 and authorizes the entry of a final judgment and dismissal of the Action with prejudice.

28

1 **VII. OTHER PROVISIONS**

2 23. The Parties are authorized to take all necessary and appropriate steps to establish the
3 means necessary to implement the Settlement Agreement.

4 24. The deadlines set forth in this Order, including, but not limited to, adjourning the
5 Final Approval Hearing, may be extended by Order of the Court, for good cause shown, without
6 further notice to the Class Members – except that notice of any such extensions shall be included
7 on the Settlement Website, www.BarsClassAction.com. Class Members should check the
8 Settlement Website regularly for updates and further details regarding extensions of these
9 deadlines.

10 25. Class Counsel and Defendant’s Counsel are hereby authorized to use all reasonable
11 procedures in connection with approval and administration of the Settlement Agreement that are
12 not materially inconsistent with this Order or the Settlement Agreement, including making, without
13 further approval of the Court, minor changes to the Settlement Agreement, to the form or content
14 of the Class Notice or to any other exhibits that the Parties jointly agree are reasonable or necessary.

15 26. This Court shall maintain continuing jurisdiction over these settlement proceedings
16 to assure the effectuation thereof for the benefit of the Settlement Class.

17 **IT IS SO ORDERED.**

18
19
20
21
22
23
24
25
26
27
28

HONORABLE JAMES DONATO
UNITED STATES DISTRICT JUDGE

Exhibit 2

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

RALPH MILAN and ELIZABETH ARNOLD
on behalf of themselves, those similarly
situated and the general public,

Plaintiffs,

v.

CLIF BAR & COMPANY,

Defendant.

Case No. 18-cv-02354-JD

CLASS ACTION

[PROPOSED] FINAL JUDGMENT

Judge: Hon. James Donato

Complaint Filed: April 19, 2018

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IT IS HEREBY ADJUDGED AND DECREED PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 58 AS FOLLOWS:

(1) On this date, the Court entered an Order Granting Final Approval of Class Settlement in the above-captioned action; and

(2) Final judgment is entered in accordance with the Order Granting Final Approval of Class Settlement, for the reasons stated therein, and the above-captioned action is dismissed with prejudice.

SO ORDERED this ____ day of _____, 2024.

HONORABLE JAMES DONATO
UNITED STATES DISTRICT JUDGE

Exhibit 3

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

RALPH MILAN and ELIZABETH ARNOLD
on behalf of themselves, those similarly
situated and the general public,

Plaintiffs,

v.

CLIF BAR & COMPANY,

Defendant.

Case No. 18-cv-02354-JD

CLASS ACTION

**[PROPOSED] ORDER GRANTING
FINAL APPROVAL OF CLASS
SETTLEMENT**

Judge: Hon. James Donato

Complaint Filed: April 19, 2018

1 This matter came on for hearing on _____, 2024, at _____. The Court has considered the
2 Settlement Agreement filed on October 31, 2023 (the “Settlement Agreement”). An opportunity to
3 be heard having been given to all other persons desiring to be heard as provided in the Class Notice
4 and having considered all of the submissions and arguments, and good cause appearing therefore;

5 IT IS HEREBY ORDERED AS FOLLOWS:

6 1. This Final Order incorporates herein and makes a part hereof the Settlement
7 Agreement, including the Exhibits thereto, and incorporates by reference the definitions in the
8 Settlement Agreement, and all terms used herein shall have the same meanings as set forth in the
9 Settlement Agreement unless set forth differently herein.

10 2. The Court has jurisdiction over the subject matter of this Action, and all Parties to
11 the Action for purpose of settlement, including all Settlement Class Members.

12 3. Pursuant to Federal Rule of Civil Procedure 23, the Court certifies the following
13 Settlement Class for settlement purposes, only:

14 All persons who, during the “Class Period” as defined in Section 2.13 of the
15 Settlement Agreement, purchased in the United States, for household use and not
16 for resale or distribution, original Clif Bars in packaging bearing the phrase
17 “Nutrition for Sustained Energy,” and Clif Kid ZBars in packaging bearing the
18 Challenged Claims (as identified in the Complaint in the Action).¹

19 4. Pursuant to Federal Rule of Civil Procedure 23(a), the Court finds Plaintiffs Ralph
20 Milan and Elizabeth Arnold are members of the Settlement Class, their claims are typical of the
21 Settlement Class, and they fairly and adequately protected the interests of the Settlement Class
22 throughout their involvement in this action. Accordingly, the Court hereby appoints Ralph Milan
23 and Elizabeth Arnold as Class Representatives for the Settlement Class.

24 5. The Court finds that the Settlement Class meets all requirements of Federal Rules of
25 Civil Procedure 23(a) and (b)(3) for certification of the claims alleged in the Complaint, including:
26 (a) numerosity; (b) commonality; (c) typicality; (d) adequacy of the Class Representatives and Class

27 ¹ Excluded from the Settlement Class are: (a) Clif Bar’s board members or executive-level officers
28 including its attorneys; (b) governmental entities; (c) the Court, the Court’s immediate family, and
the Court’s staff; and (d) any person that timely and properly excludes himself or herself from the
Settlement Class.

1 Counsel; (e) predominance of common questions of fact and law among the Settlement Class; and
2 (f) superiority.

3 6. Having considered the factors set forth in Federal Rule of Civil Procedure 23(g)(1),
4 the Court makes final its appointment of Fitzgerald Joseph LLP as Class Counsel to represent the
5 Class Members.

6 7. The Court finds that the persons excluded from the Settlement Class because they
7 filed valid Requests for Exclusion (“Opt-Outs”) are identified in Exhibit A to this Order. These
8 Class Members who filed timely, completed Opt-Outs are not bound by this Order and the
9 accompanying Final Judgment or the terms of the Settlement Agreement and may pursue their own
10 individual remedies against Defendant. However, such persons are not entitled to any rights or
11 benefits provided to Class Members by the terms of the Settlement Agreement.

12 8. The Court directed that Class Notice be given to the Class Members pursuant to the
13 Class Notice Program proposed by the Parties and approved by the Court. In accordance with the
14 Court’s Preliminary Approval Order and the Court-approved Class Notice Program, the Settlement
15 Administrator caused the forms of Class Notice to be disseminated as ordered. The Long-form Class
16 Notice advised Class Members of the terms of the Settlement Agreement; the Final Approval
17 Hearing, and their right to appear at such hearing; their rights to remain in, or opt out of, the
18 Settlement Class and to object to the Settlement Agreement; procedures for exercising such rights;
19 and the binding effect of this Order and accompanying Final Judgment, whether favorable or
20 unfavorable, to the Settlement Class.

21 9. The distribution of the Class Notice pursuant to the Class Notice Program constituted
22 the best notice practicable under the circumstances, and fully satisfies the requirements of Federal
23 Rule of Civil Procedure 23, the requirements of due process, 28 U.S.C. § 1715, and any other
24 applicable law.

25 10. Pursuant to Federal Rule of Civil Procedure 23(e)(2), the Court finds after a hearing
26 and based upon all submissions of the Parties and interested persons, the Settlement Agreement
27 proposed by the Parties is fair, reasonable, and adequate. In reaching this conclusion, the Court
28 considered the record in its entirety and heard the arguments of counsel for the Parties and all other

1 persons seeking to comment on the proposed Settlement Agreement. In addition, the Court has
2 considered a number of factors, including: (1) the complexity, expense, and likely duration of the
3 litigation; (2) the reaction of the Class Members to the Settlement Agreement; (3) the stage of the
4 proceedings and the amount of discovery completed; (4) the risks of establishing liability; (5) the
5 risks of establishing damages; (6) the risks of maintaining the class action through the trial; (7) the
6 ability of Defendant to withstand a greater judgment; and (8) the reasonableness of the relief
7 provided by the Settlement Agreement in light of the best possible recovery.

8 11. The terms and provisions of the Settlement Agreement are the product of lengthy,
9 arm's length negotiations conducted in good faith and with the assistance of experienced mediators.
10 Approval of the Settlement Agreement will result in substantial savings of time, money and effort
11 to the Court and the Parties, and will further the interests of justice.

12 12. All Class Members who have not timely and validly opted out are Class Members
13 who are bound by this Order and accompanying Final Judgment and by the terms of the Settlement
14 Agreement.

15 13. Nothing in the Settlement Agreement, this Order, the accompanying Final Judgment,
16 or the fact of the settlement constitutes any admission by any of the Parties of any liability,
17 wrongdoing or violation of law, damages, or lack thereof, or of the validity or invalidity of any claim
18 or defense asserted in the Action.

19 14. The Court has considered the submissions by the Parties and all other relevant
20 factors, including the result achieved and the efforts of Class Counsel in prosecuting the claims on
21 behalf of the Settlement Class. The efforts of Class Counsel have produced the Settlement
22 Agreement entered into in good faith, and which provides a fair, reasonable, adequate, and certain
23 result for the Settlement Class. Class Counsel have made application for an award of attorneys' fees
24 and reimbursement of expenses in connection with the prosecution of the Action on behalf of
25 themselves. The Fee Award requested is ___ % of the Common Fund. This amount is fair,
26 reasonable, and adequate under the common fund doctrine, the range of awards ordered in this
27 District and Circuit, the excellent results obtained, the substantial risk borne by Class Counsel in
28 litigating this matter, the degree of skill and quality of work performed, the financial burden imposed

1 by the contingency basis of Class Counsel's representation of Plaintiffs and the Class, and the
2 additional work required of Class Counsel to bring this Settlement to conclusion. The Court finds
3 the Fee Award is further supported by a lodestar crosscheck, whereby it finds that the hourly rates
4 of Plaintiffs' Counsel are reasonable, and that the estimated hours expended are reasonable.
5 Accordingly, the Court hereby awards \$ _____ as attorneys' fees to be paid in accordance with
6 the terms of the Settlement Agreement.

7 15. Class Counsel have also made application for reimbursement of litigation expenses.
8 Finding that such expenses were reasonably and necessarily incurred in prosecuting the action on
9 behalf of the Settlement Class, the Court finally approves Class Counsel's request for litigation
10 expenses in the amount of \$ _____, to be paid in accordance with the terms of the Settlement
11 Agreement.

12 16. Further, the Court approves Service Awards of \$ _____ each for Ralph Milan and
13 Elizabeth Arnold. The Class Representatives participated in the Action, acted to protect the
14 Settlement Class, and assisted Class Counsel. These Service Awards, which are fair, reasonable,
15 and justified, are to be paid in accordance with the terms of the Settlement Agreement.

16 17. The Court has considered all relevant factors and hereby approves the Resnick Center
17 for Food Law and Policy at the University of California, Los Angeles, School of Law, and Tufts
18 University Friedman School of Nutrition Science & Policy as the designated *cy pres* recipients of
19 any monies (if any) remaining after the negotiation period of the Cash Payments in accordance with
20 the Agreement.

21 18. The Court hereby dismisses with prejudice this Action, and all Released Claims
22 against each and all Released Parties, and without costs to any of the Parties as against the others.

23 19. Pursuant to the Northern District of California's Procedural Guidance for Class
24 Actions, within twenty-one (21) days after the distribution of the Settlement Fund, the Parties shall
25 file a Post-Distribution Accounting detailing when cash payments were sent to Class Members, the
26 number of Class Members who were sent payments, the total amount of payments paid out to Class
27 Members, the average and median recovery per Class Member, the largest and smallest amounts of
28 cash payments paid to Class Members, the number and value of cashed and uncashed checks, the

1 amount distributed to any *cy pres* recipient, any significant or recurring concerns communicated by
2 Class Members to the Settlement Administrator, Class Counsel, or Defendant’s Counsel since final
3 approval, and any other issues in settlement administration since final approval, and how any
4 concerns or issues were resolved.

5 20. Without affecting the finality of this Order and the Final Judgment, the Court
6 reserves jurisdiction over the implementation, administration, and enforcement of this Order, the
7 Final Judgment and the Settlement Agreement, and all matters ancillary thereto.

8 21. The Court finding that no reason exists for delay in entering this Order and the Final
9 Judgment pursuant to Federal Rule of Civil Procedure, Rule 54(b), the Clerk is hereby directed to
10 enter the Final Judgment forthwith.

11 22. The Parties and the Settlement Administrator are hereby directed and authorized to
12 implement and consummate the Settlement according to the terms and provisions of the Settlement
13 Agreement. In addition, the Parties, without further approval of the Court, are authorized to agree
14 to and adopt such amendments and modifications to the Settlement Agreement so long as they are:
15 (i) consistent in all material respects with this Final Order and the Final Judgment; and (ii) do not
16 limit the rights of the Settlement Class.

17 **IT IS SO ORDERED.**

18
19
20

HONORABLE JAMES DONATO
UNITED STATES DISTRICT JUDGE

Exhibit 4

Attention All Persons Who Purchased Certain Clif Bar & Company Products Since April 2014

**This Notice May Affect Your Rights
Please Read it Carefully**

The United States District Court for the Northern District of California authorized this notice. This is not a solicitation from a lawyer.

Milan v. Clif Bar & Co., No. 18-cv-2354-JD (N.D. Cal.)

You may be a Class Member entitled to monetary compensation if you purchased certain varieties of the following Clif Bar products between April 2014 and March 2023 in California or New York, or between March 2019 and March 2023 in any other State.

Original Clif Bars	Clif Kid ZBars

THIS NOTICE CONCERNS YOUR LEGAL RIGHTS, WHICH ARE AFFECTED WHETHER YOU ACT OR DON'T. PLEASE READ IT CAREFULLY.

Summary of Your Legal Rights & Options	
Submit a Claim Form	The only way to get a monetary payment. Claim Forms must be submitted either online at the Settlement Website, www.BarsClassAction , or by mail to the following address: [REDACTED]. Claims must be submitted or postmarked by [Claim Deadline].
Ask to be Excluded	Get out of this lawsuit. Get no benefits from it. Keep your rights. If you ask to be excluded you will not be bound by what the Court does in this case and will keep any right you might have to sue Clif Bar & Company separately about the same legal claims in this lawsuit. If there is a recovery in this case, including under the proposed Settlement, you will not share in that recovery. You must request to be excluded by [Opt-Out Date].

Summary of Your Legal Rights & Options	
Object	<p>Tell the Court why you believe the proposed Settlement is unfair, unreasonable, or inadequate.</p> <p>You may file a written objection no later than [Objection Date] and/or appear at the Final Approval Hearing to tell the Court why you believe the proposed Settlement is unfair, unreasonable, or inadequate.</p>
Do Nothing	<p>Stay in this lawsuit. Await the outcome. Give up certain rights.</p> <p>By doing nothing, you will get no cash payment and give up any right you may have to sue Clif Bar & Company separately about the same legal claims in this lawsuit because you will be bound by the Settlement and the Final Judgment.</p>

This notice summarizes the proposed Settlement. For the precise terms and conditions of the Settlement, please see the Settlement Agreement available at www.BarsClassAction.com, or by contacting Class Counsel at (619) 215-1741 or jack@fitzgeraldjoseph.com, by accessing the Court docket in this case (for a fee) through the Court’s Public Access to Court Electronic Records (PACER) system at <https://ecf.cand.uscourts.gov>, or by visiting the office of the Clerk of the Court for the United States District Court for the Northern District of California, 450 Golden Gate Avenue, 16th Floor, San Francisco, California 94102, file: *Milan v. Clif Bar & Co.*, No. 16-cv-2354-JD, between 9:00 a.m. and 4:00 p.m., Monday through Friday, excluding Court holidays.

PLEASE DO NOT TELEPHONE THE COURT OR THE COURT CLERK’S OFFICE TO INQUIRE ABOUT THIS SETTLEMENT OR THE CLAIMS PROCESS.

Please read the remainder of this notice for more detailed information about how to exercise your rights. To be excluded, you must act before [Opt-Out Date].

* * *

WHAT THIS NOTICE CONTAINS

Basic Information..... 3

1. Why is there a Class Notice? 3

2. What is this lawsuit about? 4

3. Why is this a class action? 4

4. Why is there a Settlement?..... 4

Who is in the Settlement?..... 4

5. How do I know if I am part of the Settlement?..... 4

6. What if I am still not sure if I am included in the Settlement? 4

What are the Terms of the Settlement? 5

7. What types of relief does the Settlement provide?..... 5

8. What is the Settlement Fund? 5

9. What can I get from the Settlement?..... 5

10. What am I giving up to get a payment? 5

11. How do I make a Claim?..... 5

12. When will I get my cash refund? 6

13. What injunctive relief does the Settlement provide? 6

Excluding Yourself from the Settlement..... 6

14. How do I get out of the Settlement? 6

15. If I don’t exclude myself, can I sue Defendant for the same thing later? 6

16. If I exclude myself, can I still get a Settlement payment? 7

Objecting to the Settlement..... 7

17. How do I tell the Court if I do not like the Settlement?..... 7

18. What is the difference between objecting and excluding myself? 8

The Lawyers Representing You 8

19. Do I have a lawyer in the case?..... 8

20. How will the lawyers be paid?..... 8

Appearing in the Lawsuit..... 8

21. Can I appear or speak in this lawsuit regarding the proposed Settlement?..... 8

The Court’s Final Approval Hearing..... 9

22. When and where will the Court decide whether to approve the Settlement? 9

23. Do I have to come to the hearing? 9

24. May I speak at the hearing? 9

If You Do Nothing..... 9

25. What happens if I do nothing at all? 9

Final Settlement Approval 9

26. What is the effect of final Settlement approval? 9

Getting More Information 10

27. How can I get more information? 10

Basic Information

1. Why is there a Class Notice?

You have the right to know about a proposed settlement of a class action lawsuit, and about your options, before the Court decides whether to approve the Settlement.

The court in charge of this case is the United States District Court for the Northern District of California (the “Court”), and the case is called *Ralph Milan et al. v. Clif Bar & Co.*, No. 18-cv-2354-JD. The case is assigned to the Honorable James Donato. The individuals who sued are called the Plaintiffs or Class Representatives, and the company they sued, Clif Bar & Company (“Clif Bar”), is called the Defendant in the litigation.

2. What is this lawsuit about?

The lawsuit alleges that Defendant violated certain laws in labeling its Clif Bars and ZBars with claims that made them seem healthy, when Plaintiffs allege they were unhealthy due to their added sugar content. Clif Bar denies any wrongdoing of any kind and maintains that its products are not unhealthy due to added sugar content and that the statements on its Clif Bars’ and ZBars’ labeling are true and not misleading.

3. Why is this a class action?

In a class action, one or more people called “Class Representatives” (in this case, Ralph Milan and Elizabeth Arnold), sue on behalf of people who have similar claims, all of whom are a “Class,” or “Class Members.” Bringing a case, such as this one, as a class action allows the adjudication of many similar claims of consumers that might be economically too small to bring in individual actions. One court resolves the issues for all class members, except for those who exclude themselves from the class.

4. Why is there a Settlement?

Clif Bar denies that it did anything wrong. The parties have agreed to a Settlement, which will allow both sides to avoid the risk and cost of further litigation. The Court has not decided in favor of the Class Representatives or Clif Bar.

Who is in the Settlement?

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

The Settlement Class includes all persons who, during the Class Period, purchased in the United States, for household use and not for resale or distribution, one of the Class Products. Settlement Agreement ¶ 2.7.

“Class Period” means from (i) April 19, 2014 to March 31, 2023 for Class Members in California and New York; and (ii) March 31, 2019 to March 31, 2023 for Class Members outside of California and New York.

“Class Products” means (i) original Clif Bars in labeling or packaging bearing the phrase “Nutrition for Sustained Energy”; and (ii) Clif Kid ZBars in packaging bearing claims such as “No High Fructose Corn Syrup;” “Nourishing Kids in Motion;” “In raising our family, finding nutritious on-the-go snacks for our kids wasn’t easy. That’s why we created Clif Kid – wholesome, delicious snacks made with organic ingredients to help keep kids going, growing, and exploring;” “Blend of carbs, fiber, protein, and fat gives kids energy so they can keep Zipping and Zooming along Keep Kids Going and Growing,” and similar Challenged Claims (as identified in the Complaint in the Action).

6. What if I am still not sure if I am included in the Settlement?

If you are not sure whether you are a Class Member, or have any other questions about the Settlement, you should visit the Settlement Website, www.BarsClassAction.com, or call the Settlement Administrator toll-free at (xxx) xxx-xxxx.

What are the Terms of the Settlement?

7. What types of relief does the Settlement provide?

The Settlement provides both monetary damages and injunctive relief to all Class Members. Class Members who make valid claims will be entitled to monetary compensation. In addition, Clif Bar has agreed not to use certain statements on the Class Products' labeling for a period of at least two years.

8. What is the Settlement Fund?

As part of the Settlement, Clif Bar has agreed to establish a \$12,000,000 "Settlement Fund" to pay all Settlement expenses, including Class Notice and Administration Expenses, attorneys' fees and costs, Service Awards for the Class Representatives, and cash refunds for Class Members who make claims.

9. What can I get from the Settlement?

Class Members who timely submit a valid approved Claim are entitled to compensation. Each timely, valid claimant will receive a payment based on the type and estimated amount of Class Products purchased during the Class Period.

Class Members, whether or not they provide Proof of Purchase, may receive:

- i. Five dollars (\$5) if they purchased up to 30 bars;
 - ii. Ten dollars (\$10) if they purchased between 31 and 60 bars; and
 - iii. Fifteen dollars (\$15) if they purchased more than 60 bars.
- b. Class Members who provide Proof of Purchase may receive \$15 for the first 60 bars, plus twenty-five cents (\$0.25) for each additional bar up to a maximum recovery of fifty dollars (\$50), (i.e., if there is Proof of Purchase for 75 bars, that claimant may receive $\$15 + 15 \times \$0.25 = \$18.75$).

These amounts are subject to a pro rata increase or decrease if the value of all approved Claims either exceeds or falls short of the amount available to Class Members.

10. What am I giving up to get a payment?

If you are a Class Member, unless you exclude yourself from the Settlement, you cannot sue Defendant, continue to sue, or be part of any other lawsuit against Defendant for claims released in this Settlement. It also means that all decisions by the Court will bind you. The Released Claims and Released Parties are defined in the Settlement Agreement and describe the legal claims that you give up (or "release") if you stay in the Settlement. The Released Claims relate to the Class Products and issues raised in the Action. The Settlement Agreement is available on the Settlement Website, www.BarsClassAction.com.

11. How do I make a Claim?

Class Members wishing to make a Claim must either (a) visit the Settlement Website, www.BarsClassAction.com, and submit a Claim Form online, or (b) print, fill out, and mail the

Claim Form to the Settlement Administrator at the following address: [redacted]. **The deadline for submitting a claim is [Claim Deadline].**

12. When will I get my cash refund?

Payments will be made to Class Members who submit valid and timely Claim Forms after the Court grants “final approval” to the Settlement, and after any appeals are resolved. If the Court approves the Settlement, there may be appeals. It is always uncertain when these appeals will be resolved and resolving them can take time. Please be patient.

13. What injunctive relief does the Settlement provide?

As part of the Settlement, Clif Bar will modify the labels of the Class Products and will commit not to use on the Class Products the labeling statements identified below for a period of 24 months, so long as a Class Product contains more than 10% of calories from added sugar. Beginning no later than 12 months following the date the Judgment becomes final, Clif Bar will not distribute Class Products with labels that contain the specified statements:

Clif Bars: Clif Bar will refrain from using the word “Nutrition” (including “Nutritious”).

Clif Kid ZBars: Clif Bar will refrain from using the word “Nutritious,” and the phrase, “Nourishing Kids in Motion.”

Excluding Yourself from the Settlement

14. How do I get out of the Settlement?

If you do not want to be bound by this Settlement, you must request to be excluded from the Class. If you request to be excluded, you will retain any individual rights you have against Defendant and will not have “released” it from any of the Released Claims. However, you will *not* be eligible to receive compensation under the Settlement, as described above. You also may not object to the Settlement if you request to be excluded.

To exclude yourself (or “opt-out”) from the Settlement, you must submit online, or mail to the Settlement Administrator at the below address a written request to be excluded. Your written request must: (a) contain the name of this lawsuit, *Milan v. Clif Bar & Co.*, No. 18-cv-2354-JD; (b) contain your full name and address; (c) state that you wish to be excluded from the Settlement; and (d) be signed by you or your attorney. Forms are available to submit or print at the Settlement Website, www.BarsClassAction.com. Printed forms should be mailed to the following address:

ADDRESS
ADDRESS
ADDRESS

To be timely, an opt-out form must be submitted online or postmarked on or before [Opt-Out Date].

15. If I don’t exclude myself, can I sue Defendant for the same thing later?

No. Unless you exclude yourself, you give up any right to sue Defendant for the claims that this Settlement resolves (i.e., those claims defined in the Settlement Agreement as the “Released

Claims”). If you have a pending lawsuit against Defendant regarding similar claims, speak to your lawyer in that lawsuit immediately. You may need to exclude yourself from this Settlement to continue your own lawsuit. If you properly exclude yourself from the Settlement, you will not be bound by any orders or judgments entered in the Action relating to the Settlement.

16. If I exclude myself, can I still get a Settlement payment?

No. You will not get any money from the Settlement if you exclude yourself. If you exclude yourself from the Settlement, do not submit a Claim Form asking for benefits.

Objecting to the Settlement

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

If you are a Class Member, you can ask the Court to deny approval by filing an objection. You can’t ask the Court to order a different settlement; the Court can only approve or reject the Settlement. If the Court denies approval, no Settlement payments will be sent out, and the lawsuit will continue. If that is what you want to happen, you should object.

Any objection to the proposed Settlement must be in writing. If you file a timely written objection, you may, but are not required to, appear at the Final Approval Hearing, either in person or through your own attorney. If you appear through your own attorney, you are responsible for hiring and paying that attorney.

All written objections and supporting papers must contain:

- (a) clear identification of the case name and number (*Milan v. Clif Bar & Co.*, No. 18-cv-2354-JD (N.D. Cal.));
- (b) the objector’s name, address, telephone number and if represented by counsel, the name, address, and telephone number of his/her counsel;
- (c) a statement under oath that the objector is a Class Member;
- (d) a statement of the objection and the specific grounds supporting the objection;
- (e) a statement whether the objection applies only to the objector, to a specific subset of the Class, or to the entire Class;
- (f) copies of any papers, briefs, or other documents upon which the objection is based; and
- (g) the objector’s handwritten, dated signature.

Objections must be submitted to the Court either by filing them electronically or in person at any location of the United States District Court for the Northern District of California or by mailing them to the Class Action Clerk, United States District Court for the Northern District of California, 450 Golden Gate Avenue, 16th Floor, San Francisco, California 94102, and be filed or postmarked on or before [Objection Date].

18. What is the difference between objecting and excluding myself?

Objecting is telling the Court that you do not like something about the Settlement. You can object to the Settlement only if you do not exclude yourself from the Settlement. Excluding yourself from the Settlement is telling the Court that you do not want to be part of the Settlement. If you exclude yourself from the Settlement, you have no basis to object to the Settlement because it no longer affects you. Therefore, if you submit both a Request for Exclusion Form and Objection, you will be deemed to have opted out of the Settlement, and thus to be ineligible to object. However, any objecting Class Member who has not timely submitted a completed Request for Exclusion Form will be bound by the terms of the Agreement upon the Court's final approval of the Settlement.

The Lawyers Representing You

19. Do I have a lawyer in the case?

Yes. The Court has appointed Fitzgerald Joseph LLP as Class Counsel. The lawyers will be compensated from the Settlement Fund, in an amount to be determined by the Court. If you want to be represented by your own lawyer, you may hire one at your own expense.

20. How will the lawyers be paid?

Class Counsel spent considerable time and effort prosecuting this matter on a purely contingent fee basis, and advanced the expenses of the litigation, in the expectation that they would receive a fee, and have expenses reimbursed, only if there was a benefit created for the Class.

Class Counsel will file a motion on or before [Fee Motion Deadline] seeking an award of up to one-third of the Settlement Fund in fees, and reimbursement of case expenses totaling up to \$917,584.35, plus any expenses incurred after preliminary approval. Class Counsel will also seek on behalf of the Class Representatives Service Awards of \$5,000 each for Ralph Milan and Elizabeth Arnold. The Court will determine the amount of fees, expenses, and service awards that will be paid from the Settlement Fund.

After Class Counsel's motion for attorneys' fees, expenses, and service awards is filed on or before [Fee Motion Deadline], it will be posted on the Settlement Website, www.BarsClassAction.com, and you will have an opportunity to review and comment on the motion via an objection.

Appearing in the Lawsuit

21. Can I appear or speak in this lawsuit regarding the proposed Settlement?

As long as you do not exclude yourself, you can (but do not have to) participate and speak for yourself in this lawsuit regarding the proposed Settlement. This is called making an appearance. You can also have your own lawyer appear in court and speak for you, but you will have to pay for the lawyer yourself.

The Court's Final Approval Hearing

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

The Court will hold a Final Approval Hearing (sometimes called a “fairness hearing”) on [DATE], at [time], which may be held telephonically or through Zoom videoconference. Prior to the hearing date, the Courtroom Deputy will publish a notice on the case docket explaining how the hearing will be conducted and providing access information for counsel and for members of the public and press. **PLEASE NOTE THAT the date of the Final Approval Hearing may change without further notice to the Class.** It is strongly advised to check the Settlement Website or the Court’s PACER site to confirm that the date has not been changed.

At the Final Approval Hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. The Court will also consider how much to award to Class Counsel and the Class Representatives. If there are objections, the Court will consider them at this time. After the hearing, the Court will decide whether to approve the Settlement.

23. Do I have to come to the hearing?

No. Class Counsel will answer any questions that the Court may have, but you may come at your own expense. If you submit an objection, you do not have to come to the Court to talk about it. As long as you filed or mailed your written objection to the proper addresses, the Court will consider it. You may also pay your own lawyer to attend, but it is not necessary.

24. May I speak at the hearing?

Yes. You may appear and speak at the Final Approval Hearing. Although it is not required, if you intend to appear and speak, you are requested to file with the Court and/or serve on the Parties a “Notice of Intent to Appear,” no later than Seven (7) Calendar Days before the Final Approval Hearing. Persons who opt out, however, may not appear and be heard.

If You Do Nothing

25. What happens if I do nothing at all?

If you do nothing, you will not get a payment from the Settlement. Unless you exclude yourself, you will not be able to start a lawsuit, or be part of any other lawsuit against Defendant about the claims in this case, ever again.

Final Settlement Approval

26. What is the effect of final Settlement approval?

If the Court grants final approval of the Settlement, all members of the Class who have not excluded themselves will release and forever discharge any and claims that have been, might have been, are now, or could have been brought arising out of or relating to the facts alleged in the Complaint filed in this Action, including the labeling, marketing, advertising, promotion, or distribution of the Class Products at any time during the Class Period.

Getting More Information

27. How can I get more information?

This notice summarizes the proposed Settlement. More details are in the Settlement Agreement, and available at the Settlement Website, www.BarsClassAction.com. If you have additional questions, you can visit the Settlement Website or contact the Settlement Administrator:

By Mail: [ADDRESS]

By Email: info@BarsClassAction.com

By Phone (Toll Free): (xxx) xxx-xxxx

Updates will be posted at the Settlement Website, as information about the Settlement process becomes available.

You are also welcome to contact Class Counsel with any questions:

By Email: jack@fitzgeraldjoseph.com

By Phone: (619) 692-1741

For a more detailed statement of the matters involved in the litigation or the Settlement, you may review the various documents on the Settlement Website, and/or the other documents filed in this case by accessing the Court docket in this case, for a fee, through the Court’s Public Access to Court Electronic Records (PACER) system at <https://ecf.cand.uscourts.gov>, or by visiting the office of the Clerk of the Court for the United States District Court for the Northern District of California, 450 Golden Gate Avenue, 16th Floor, San Francisco, California 94102, file: *Milan v. Clif Bar & Co.*, No. 18-cv-2354-JD), between 9:00 a.m. and 4:00 p.m., Monday through Friday, excluding Court holidays.

* * *

PLEASE DO NOT TELEPHONE THE COURT OR THE COURT CLERK’S OFFICE TO INQUIRE ABOUT THIS SETTLEMENT OR THE CLAIM PROCESS.

Exhibit 5

Legal Notice

If You Purchased Certain Clif Bar & Company Bars Since April 2014 You Could Receive a Cash Payment as Part of a Class Action Settlement.

What is the lawsuit about? The lawsuit contends that Clif Bar & Company (“Clif Bar”) made certain statements on the labels of various original Clif Bars and Clif Kid ZBars (“Class Products”) that are allegedly misleading because the statements suggested the bars are healthy, whereas Plaintiffs allege the bars are unhealthy because of their added sugar. Clif Bar maintains that these products are not unhealthy due to the presence of added sugars, and that the statements on its bars are true and not misleading. The Court has not determined whether Plaintiffs or Clif Bar is correct.

Who is included?

You are a Class Member if you bought one or more of the Class Products for household use, and not for resale or distribution, between April 2014 and March 2023 in California or New York, or between March 2019 and March 2023 in any other State. The Class Products include Original Clif Bars in packaging stating “Nutrition for Sustained Energy,” and Clif Kid ZBars in packaging stating “No High Fructose Corn Syrup,” “Nourishing Kids in Motion;” “In raising our family, finding nutritious on-the-go snacks for our kids wasn’t easy. That’s why we created Clif Kid – wholesome, delicious snacks made with organic ingredients to help keep kids going, growing, and exploring;” “Blend of carbs, fiber, protein, and fat gives kids energy so they can keep Zipping and Zooming along,” and similar Challenged Claims (as identified in the Complaint in the Action).

What does the Settlement provide? Clif Bar has agreed to establish a \$12,000,000 “Settlement Fund” to pay all Settlement expenses, including the costs of class notice and administration, attorneys’ fees and costs, service awards for the Plaintiffs, and cash refunds for Class Members who make valid Claims. Your legal rights will be affected if you are a Class Member and do not exclude yourself.

What are your options?

Submit A Claim: To receive Settlement benefits, you must complete and submit a Claim Form. Claim Forms are available at the Settlement Website and can be submitted electronically or mailed to the Class Administrator. A Claim Form must be **submitted online or postmarked by [Claim Deadline]**

Opt-Out or Object: If you opt-out or request exclusion, you will retain your rights to sue Clif Bar separately; however, you will not be eligible to receive any benefits. You must submit a Request for Exclusion, available at the Settlement Website. Request for Exclusions must be **postmarked on or before [Opt-Out Date]**. Detailed instructions are available on the Settlement Website. You may also object to any part of this Settlement. Details about how to object are available at the Settlement Website. Objections must be mailed to the Class Administrator and **postmarked on or before [Objection Date]**.

Do Nothing: If you do nothing, you will not be eligible to receive any benefits and will be bound by the terms of the Settlement Agreement and Final Judgment.

Has the Court approved the Settlement? No. The Court has set a hearing for **[DATE]** to determine whether to approve the Settlement and what attorneys’ fees, expenses, and service payments to award. Class Counsel will file a motion seeking an award of up to one-third of the Settlement Fund in fees, and reimbursement of case expenses totaling up to \$917,584.35, plus any

expenses incurred after entry of the Preliminary Approval Order. Class Counsel will also seek on behalf of the Class Representatives Service Awards of \$5,000 each for Ralph Milan and Elizabeth Arnold. The Court will determine the amount of fees, expenses, and service awards that will be paid from the Settlement Fund.

After Class Counsel's motion for attorneys' fees, expenses, and service awards is filed on or before **[Fee Motion Deadline]**, it will be posted on the Settlement Website and you will have an opportunity to review and comment on the motion via an objection.

You do not need to appear at the Final Approval Hearing but you may come at your own expense. The Court has appointed Fitzgerald Joseph LLP as Class Counsel. If you want to be represented by your own lawyer, you may hire one at your own expense.

This is only a summary of the key Settlement terms. A full copy of the Settlement Agreement is available at the Settlement Website or by calling **(xxx) xxx-xxxx**.

www.BarsClassAction.com

(xxx) xxx-xxxx