

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE
JUSTICE GLUSTEIN

)
)

THURSDAY, THE 15TH DAY
OF NOVEMBER, 2018

BETWEEN:

JOOLI PARK

Plaintiff

-and-

NONG SHIM CO., LTD., NONGSHIM AMERICA, INC.,
OTTOGI CORPORATION, OTTOGI AMERICA, INC.,
SAMYANG FOODS CO., LTD., KOREA YAKULT CO., LTD.
AND PALDO CO., LTD.

Defendants



Proceeding under the *Class Proceedings Act, 1992*

ORDER

THIS MOTION made by the plaintiffs for an Order approving the form of notice that will advise class members of the hearing to approve certification as a class proceeding and to approve the proposed settlement, as well as the manner of publication of such notice coming for hearing on the 15th day of November, 2018 at 393 University Avenue, Toronto, Ontario, with the consent of the Defendant Samyang Foods Co., Ltd. (the "Settling Defendant"), the other Defendants taking no position, and on hearing counsel for the parties and reading the materials filed by the Plaintiffs;

THIS COURT ORDERS that:

1. For the purposes of this Order, the definitions set out in the Settlement Agreement apply to and are incorporated into this Order, and is attached as **Schedule "A"** (except for the Schedules to the Settlement Agreement).

66 2. The motion for certification as a class proceeding for settlement purposes as against the Settling Defendant and for settlement approval as against the Settling Defendant shall be heard on on the 26th day of March, 2019 at Osgoode Hall, 130 Queen Street West, Toronto, Ontario (the "Approval Hearing").

3. Notice of Hearing on Class Certification and Settlement Approval is approved in substantially the form attached as **Schedule "B"** is approved (the "Hearing Notice").

4. Notice of Hearing on Class Certification and Settlement Approval shall be published in accordance with **Schedule "C"**, attached to this Order (the "Notice Program").

5. The Hearing Notice and the Notice Program constitute fair and reasonable notice of the Approval Hearing.

6. Publication of the Hearing Notice shall be made as soon as reasonably practicable after the issuance of this Order.

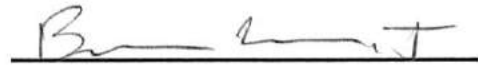
7. This Order is contingent upon a parallel order being made by the British Columbia Court, and the terms of this Order shall not be effective unless and until such an order is made by the British Columbia Court.

8. References in the Statement of Claim and in the Settlement Agreement to "Sam Yang Foods Co., Ltd.," are hereby corrected to refer to this Defendant's proper name as "Samyang Foods Co., Ltd." and leave is granted to issue an Amended Statement of Claim in the form attached as **Schedule "D"** making this correction.

ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO.:

NOV 16 2018

PER / PAR:


Justice Glustein

Schedule A to Order of Justice Glustein – copy of Settlement Agreement (except for Schedules to the Settlement Agreement)

CANADIAN RAMEN NOODLES CLASS ACTIONS

NATIONAL SETTLEMENT AGREEMENT

Made as of November 25, 2017

Between

**JOOLI PARK, THERESA KOZMA, KEVIN GILCHRIST, LAREEN FREAYH,
and ALLAN HUSTAD**

(the "Plaintiffs")

And

SAM YANG FOODS CO., LTD.

(the "Settling Defendant")

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RECITALS

A. WHEREAS, this settlement agreement is made between the Plaintiffs, on behalf of the themselves and the Settlement Class Members, and the Settling Defendant to resolve these Actions;

B. WHEREAS, the Plaintiffs have alleged that the Settling Defendant participated in a conspiracy with other manufacturers of Korean Noodles to fix, raise, maintain, or stabilize the prices of Korean Noodles sold in Canada from May 1, 2001, to December 31, 2010, contrary to Part VI of the *Competition Act*, RSC 1985, c. C-34 and the common law and/or the civil law;

C. WHEREAS, the Settling Defendant denies the allegations made by the Plaintiffs, and denies any liability whatsoever;

D. WHEREAS, the Plaintiffs, on behalf of the themselves and the Settlement Class Members, and the Settling Defendant agrees that this Settlement Agreement shall not be deemed or construed to be an admission or evidence of the truth of any of the Plaintiffs' claims or allegations in the Actions;

E. WHEREAS, arm's length settlement negotiations have taken place between Class Counsel and the Settling Defendant, and this Settlement Agreement embodies all of the terms and conditions of the good-faith settlement between the Settling Defendant, the Plaintiffs and Settlement Class Members, and has been reached as a result of the parties' negotiations, subject to approval of the Courts as provided herein;

F. WHEREAS, Class Counsel have concluded, after due investigation and after carefully considering the relevant circumstances, that it would be in the best interests of Settlement Class Members to enter into this Settlement Agreement in order to avoid the uncertainties of litigation and to assure that the benefits reflected herein are obtained for the Settlement Class Members, and further, that Class Counsel consider the settlement set forth herein to be fair, reasonable, adequate, and in the best interests of the Settlement Class;

G. WHEREAS, the Settling Defendant has agreed to enter into this Settlement Agreement in order to avoid the expenses, risk and burden of further litigation, to obtain the releases, orders and judgment contemplated by this Settlement Agreement, and to put to rest with finality all claims that have been or could have been asserted against the Settling Defendant in the Actions;

NOW THEREFORE, in consideration of the covenants, agreements, and releases herein set forth, it is agreed by and among the undersigned that the claims of the Settlement Class Members be settled, compromised, and dismissed on the merits and with prejudice as to the Settling Defendant and all other Released Parties and, except as hereafter provided, without costs against the Class or the Settling Defendant, subject to the approval of the Courts, on the following terms and conditions:

SECTION 1 - DEFINITIONS

The following capitalized terms, as used in this Settlement Agreement, have the following meanings:

(1) **Actions** mean the BC Action and the Ontario Action.

(2) **Administrative Expenses** means all fees, disbursements, expenses, costs, taxes and any other amounts incurred or payable by the Plaintiffs, Class Counsel or otherwise for the approval, implementation and operation of this Settlement Agreement, including the costs of notices, but excluding Class Counsel Fees and Class Counsel Disbursements.

- (3) **BC Action** means *Kozma et al. v. Nong Shim Co., Ltd., et al.*, filed in the Vancouver Registry as VLC-S-S-157170.
- (4) **BC Court** means the Supreme Court of British Columbia.
- (5) **BC Plaintiffs** means Theresa Kozma, Kevin Gilchrist, Lareen Freayh, and Allan Hustad.
- (6) **BC Settlement Class** all Persons in British Columbia who purchased, either directly or indirectly, Korean Noodles during the Class Period, except for any Excluded Persons.
- (7) **Class Counsel** means Klein Lawyers.
- (8) **Class Counsel Disbursements** include the disbursements, administration expenses, and applicable taxes incurred by Class Counsel in the prosecution of the Actions, as well as any adverse costs awards issued against the Plaintiffs in any of the Actions.
- (9) **Class Counsel Fees** means the fees of Class Counsel, and any applicable taxes or charges thereon, including any amounts payable as a result of the Settlement Agreement by Class Counsel or the Settlement Class Members to any other body or Person.
- (10) **Class Period** means May 1, 2001, to December 31, 2010.
- (11) **Common Issue** means: Did the Settling Defendant conspire to fix, raise, maintain, or stabilize the prices of Korean Noodles in Canada during the Class Period.
- (12) **Counsel for the Settling Defendant** means Gowling WLG.
- (13) **Courts** mean the BC Court and the Ontario Court.
- (14) **Defendants** mean the entities named as defendants in any of the Actions, and any persons added as defendants in the Actions in the future.
- (15) **Effective Date** means the date on which Final Approval of this settlement has been obtained.
- (16) **Excluded Persons** means each Defendant, the directors and officers of each Defendant, the subsidiaries or affiliates of each Defendant, the entities in which each Defendant or any of that Defendant's subsidiaries or affiliates have a controlling interest and the legal representatives, heirs, successors and assigns of each of the foregoing, and those Persons who validly and timely opt-out of the Actions in accordance with the orders of the applicable Court.
- (17) **Execution Date** means the date as of which the Parties have executed this Settlement Agreement.
- (18) **Final Approval** means the later of the date on which orders approving the settlement have been granted by the Courts and the time to appeal such orders has expired without any appeal being taken or if an appeal is taken, the date of the final disposition of such appeal.
- (19) **Korean Noodles** means any instant noodle soup product consisting of dried instant noodles paired with a seasoning packet and dehydrated vegetables, packaged in a bag, pouch, cup, or bowl, as sold by the Defendants or any of their affiliates or subsidiaries in Canada during the Class Period.
- (20) **Non-Settling Defendant** means any Defendant that is not a Settling Defendant or that has not entered into a settlement with the Plaintiffs in the Actions whether or not such settlement agreement is in existence at the Execution Date, and includes any Defendant that terminates its own settlement

agreement in accordance with its terms or whose settlement otherwise fails to take effect for any reason, whether or not such settlement agreement is in existence at the Execution Date.

(21) **Ontario Action** means *Jooli Park v. Nong Shim Co. Ltd et al*, filed in the Ontario Superior Court of Justice.

(22) **Ontario Court** means the Ontario Superior Court of Justice.

(23) **Ontario Plaintiffs** means Jooli Park.

(24) **Ontario Settlement Class** means all Persons in Canada, except British Columbia, who purchased, either directly or indirectly, Korean Noodles during the Class Period, except for any Excluded Persons.

(25) **Plaintiffs** means the BC Plaintiffs and the Ontario Plaintiffs.

(26) **Opt-Out Deadline** means the date which is sixty (60) days after the date in the notice described in Section 11.1(1) is first published.

(27) **Other Actions** means actions or proceedings, excluding the Actions, relating to Released Claims commenced by a Settlement Class Member either before or after the Effective Date.

(28) **Parties** means the Settling Defendant, the Plaintiffs, and, where necessary, the Settlement Class Members.

(29) **Person** means an individual, corporation, partnership, limited partnership, limited liability company, association, joint stock company, estate, legal representative, trust, trustee, executor, beneficiary, unincorporated association, government or any political subdivision or agency thereof, any other business or legal entity and their heirs, predecessor, successor, representative, or assignees.

(30) **Proportionate Liability** means the proportion of any judgment that, had the Settling Defendant not settled, the Courts, as appropriate, would have apportioned to the Releases.

(31) **Released Claims** means all manner of claims, demands, actions, suits, causes of action, whether class, individual, or otherwise in nature, damages whenever incurred, liabilities of any nature whatsoever, including without limitation costs, penalties, and attorneys' fees, known or unknown, suspected or unsuspected, asserted or unasserted, in law or equity, that any of the Releasing Parties, or any one of them, whether directly, indirectly, representatively, derivatively, or in any other capacity, ever had, now have, or hereafter can, shall, or may have, relating in any way to any conduct related to, arising from, or described in the Actions prior to the Effective Date on account of, arising out of, resulting from, or related to in any respect the purchase, sale, pricing, discounting, manufacturing, offering, or distributing of Korean Noodles or relating, in any way, to any conduct alleged in the Actions including, without limitation, any such claims which have been asserted or could have been asserted in the Actions, or any one of them, against the Settling Defendant including, but not limited to, claims arising under federal or provincial antitrust, unfair competition, unfair practices, price discrimination, unitary pricing, trade practice, or civil conspiracy law, including without limitation the *Competition Act*, RSC 1985, c. C-34. However, the Released Claims do not include: (1) claims based on negligence, personal injury, bailment, failure to deliver lost goods, damaged or delayed goods, product defects, or breach of product warranty, or breach of contract claims relating to Korean Noodles; (2) claims brought outside Canada relating to purchases of Korean Noodles outside Canada; or (3) claims brought under laws other than those of Canada relating to purchases of Korean Noodles outside of Canada.

(32) **Released Party** means, Samyang Foods Co., Ltd.; the present and former direct and indirect parents, subsidiaries, divisions, affiliates, or distributors of Samyang Foods Co., Ltd.; the present and

former officers, directors, employees, agents, attorneys, servants, representatives, members, managers, and/or partners of any of the above entity (with respect to any conduct of any of the above entity); and the predecessors, heirs, executors, trustees, administrators, successors, and/or assigns of any of the above persons or entities. Notwithstanding the foregoing, "Released Party" shall not include Nong Shim Co., Ltd., Nongshim America, Inc., Ottogi Co., Ltd., Ottogi America, Inc., Paldo Co., Ltd., Korea Yakult Co. or any of their present and former direct and indirect parents, subsidiaries, divisions, affiliates, or distributors; any of their, or their parents', subsidiaries', divisions', affiliates', or distributors' present or former officers, directors, employees, agents, attorneys, servants, representatives, members, managers, and/or partners; and any of their, or their parents', subsidiaries', divisions', affiliates', or distributors' predecessors, heirs, executors, trustees, administrators, successors, and/or assigns.

(33) **Releasing Parties** means jointly and severally, individually and collectively to the Plaintiffs and the Settlement Class Members, as well as each of their past and present officers, directors, members, managers, agents, employees, legal representatives, trustees, parents, affiliates, heirs, executors, administrators, purchasers, predecessors, successors, and assigns (and the parents', subsidiaries', and affiliates' past and present officers, directors, agents, employees, legal representatives, trustees, parents, affiliates, heirs, executors, administrators, and purchasers) and officers, directors, agents, employees, legal representatives, trustees, parents, affiliates, heirs, executors, administrators, purchasers, predecessors, successors, and assigns of each of the foregoing.

(34) **Settlement Agreement** means this agreement by and between the Settling Defendant and the Plaintiffs, both individually and on behalf to the Settlement Class Members.

(35) **Settlement Amount** means \$288,586.98 in Canadian dollars.

(36) **Settlement Fund** means settlements monies and interest recovered for the benefit of the Settlement Class.

(37) **Settlement Class** means all persons in Canada who purchased, either directly or indirectly, Korean Noodles during the Class Period, except for any Excluded Persons.

(38) **Settlement Class Member** means a member of a Settlement Class.

(39) **Settling Defendant** means Sam Yang Foods CO., LTD.

(40) **Trust Account** means an interest-bearing trust account at a Canadian Schedule 1 bank under the control of Class Counsel, for the benefit of the Settlement Class Members or the Settling Defendant, as provided for in this Settlement Agreement.

(41) **U.S. Litigation** means the consolidated class action proceedings currently pending in the United States District Court for Northern District of California, entitled In re: Korean Ramen Antitrust Litigation, Case No. C-13-04115-WHO.

(42) **U.S. Settlement Agreements** means settlement agreements dated September 8, 2015, in the U.S. Litigation between Samyang Foods Co., Ltd. and the plaintiffs in that litigation.

SECTION 2 – SETTLEMENT APPROVAL

2.1 Best Efforts

(1) Class Counsel and the Plaintiffs agree to recommend approval of this settlement by the Courts without qualification or condition not set forth herein. The Parties agree to undertake their reasonable best efforts, including, without limitation, all steps and efforts contemplated by this Settlement Agreement

and any other steps and efforts that may become necessary by order of the Courts or otherwise, to carry out the terms of this Settlement Agreement and to obtain Final Approval of this Settlement Agreement.

2.2 Motions Seeking Approval of Notice and Certification

(1) The Plaintiffs shall file motions before the Courts, by a date no earlier than March 15, 2018, for orders approving the notices described in Section 11.1(1) and certifying the Actions commenced in their respective jurisdictions as a class proceeding as against the Settling Defendant (for settlement purposes only).

(2) The BC order and the Ontario order approving the notices described in Section 11.1(1) and certifying the BC Action and the Ontario Action for settlement purposes shall be substantially in the form attached as Schedules A and B, respectively.

2.3 Motions Seeking Approval of the Settlement

(1) The Plaintiffs shall make best efforts to file motions before the Courts for orders approving this Settlement Agreement as soon as practicable after the orders referred to in Section 2.2(1) have been granted; and the notices described in Section 11.1(1) have been published.

(2) The BC order and the Ontario order approving this settlement agreement shall be substantially in the form attached as Schedules D and E, respectively.

(3) This Settlement Agreement shall only become final on the Effective Date.

SECTION 3 – SETTLEMENT BENEFITS

3.1 Payment of Settlement Amount

(1) Within thirty (30) days of the Effective Date, the Settling Defendant shall pay the Settlement Amount to Class Counsel for deposit into the Trust Account.

(2) Payment of the Settlement Amount shall be made by wire transfer or as otherwise agreed by the Parties.

(3) The Settlement Amount and other consideration to be provided in accordance with the terms of this Settlement Agreement shall be provided in full satisfaction of the Released Claims against the Released Parties.

(4) The Settlement Amount shall be all-inclusive of all amounts, including interest and costs.

(5) The Released Parties shall have no obligation to pay any amount in addition to the Settlement Amount, for any reason, pursuant to or in furtherance of this Settlement Agreement or the Actions.

(6) Class Counsel shall maintain the Trust Account as provided for in this Settlement Agreement.

(7) Class Counsel shall not pay out all or any part of the monies in the Trust Account, except in accordance with this Settlement Agreement, or in accordance with an order of the Courts obtained after notice to the Parties.

3.2 Taxes and Interest

(1) Except as hereinafter provided, all interest earned on the Settlement Amount in the Trust Account shall accrue to the benefit of the Settlement Classes and shall become and remain part of the Trust Account.

(2) Subject to Section 3.2(3), all taxes payable on any interest which accrues on the Settlement Amount in the Trust Account or otherwise in relation to the Settlement Amount shall be paid from the Trust Account. Class Counsel shall be solely responsible to fulfill all tax reporting and payment requirements arising from the Settlement Amount in the Trust Account, including any obligation to report taxable income and make tax payments. All taxes (including interest and penalties) due with respect to the income earned by the Settlement Amount shall be paid from the Trust Account.

(3) The Settling Defendant shall have no responsibility to make any filings relating to the Trust Account and will have no responsibility to pay tax on any income earned on the Settlement Amount or pay any taxes on the monies in the Trust Account, unless this Settlement Agreement is terminated, in which case the interest earned on the Settlement Amount in the Trust Account or otherwise shall be paid to the Settling Defendant who, in such case, shall be responsible for the payment of all taxes on such interest not previously paid by Class Counsel.

SECTION 4 – COOPERATION

4.1 Documents

(1) Within 30 days of the Effective Date, or with respect to paragraph 4.1(1)(c) within 60 days of the Effective Date, the Settling Defendant shall provide the Plaintiffs with the following documents:

- (a) Copies of all documents that the Settling Defendant provided to the Korean Fair Trade Commission ("KFTC") in connection with the KFTC's investigation of the Korean Noodles industry. No documents submitted to the KFTC by the Settling Defendant will be withheld from the production required this paragraph on the basis of solicitor-client privilege;
- (b) A Certificate of Expert Performance as issued to the Settling Defendant by Korea Trade Statistics Promotion Institute providing data on the Settling Defendant's exports of Korean Noodles to Canada; and
- (c) Copies of the deposition transcripts, and accompanying exhibits, of depositions conducted of the Settling Defendant's current employees in the U.S. Litigation, with the Plaintiffs to pay the costs of ordering such deposition transcripts.

(2) After the Effective Date, the Plaintiffs may inspect and attempt to make their own copy of data stored on a hard drive and held by the Settling Defendant pursuant to an agreement in the U.S. Litigation (the "Samyang Hard Drive") pursuant to an agreement between the parties to the US Litigation and/or an order of the Court in the US Litigation. Such inspection and copying shall be upon notice to the parties in the U.S. Litigation, and the Plaintiffs may seek an order from the U.S. court, as necessary, to permit it to inspect and copy the Samyang Hard Drive, and the Settling Defendant shall not oppose that order. Alternatively, the Plaintiffs may request a copy of the documents or electronic information downloaded from the Samyang Hard Drive from any of the parties to the U.S. Litigation, and the Settling Defendant, to the extent permitted by their obligations in the U.S. Litigation, shall not oppose such a request. In the further alternative, the Plaintiffs may seek an order from the Courts against the Non-Settling Defendants, requiring the Non-Settling Defendants to produce their copy of the Samyang Hard Drive, and the Settling

Defendant, to the extent permitted by their obligation in the U.S. Litigation, shall not oppose such a Canadian order.

4.2 Informal Co-operation

(1) Within 90 days of the Effective Date, and upon reasonable notice, the Settling Defendant shall make Mr. Sung Man Kim available for a two hour telephone conversation with Class Counsel regarding the Settling Defendant's submission to the KFTC in connection with the KFTC's investigation of the Korean Noodles industry. Counsel for the Settling Defendant will arrange the logistics of, and participate in, any such telephone conversation.

4.3 Witnesses

(1) With respect to the documents to be produced at Section 4.1(1)(a) and (b), within 30 days delivery of these, the Settling Defendant shall provide an affidavit for use in the Actions from an employee attesting to the authenticity of these documents as business records.

(2) With respect to the deposition transcripts to be obtained at Section 4.1.(1)(c), within 90 days of obtaining these, the Plaintiffs may require that the Settling Defendant produce an affidavit for use in the Actions from any employee who was deposed, if that employee remains with the Settling Defendant, attaching the deposition transcript and accompanying exhibits to the affidavit, and confirming that the testimony given by the employee at the deposition was true.

(3) Subject to the rules of evidence, any court order with respect to confidentiality and the other provisions of this Settlement Agreement, the Settling Defendant agrees to use reasonable efforts to produce at trial or through acceptable affidavits (i) a representative qualified to establish for admission into evidence any of the Settling Defendant's documents provided as cooperation pursuant to Section 4.1 of this Settlement Agreement that Class Counsel (using best efforts to authenticate documents for use at trial without a live witness) and (ii) a maximum of three representatives qualified to establish for admission into evidence information provided in cooperation pursuant to Section 4 of this Settlement Agreement, provided that Class Counsel shall use all reasonable efforts to limit this requirement to a single witness. To the extent reasonably possible, a single witness will be used both to authenticate documents and provide the information at trial contemplated by this paragraph. The failure of a specific officer, director or employee to agree to make him or herself available, or to otherwise cooperate with the Plaintiffs, shall not constitute a violation of this Settlement Agreement. To the extent any of the Settling Defendant's cooperation obligations require any current or former employees of the Settling Defendant to travel from their principal place of business to another location Class Counsel shall reimburse the Settling Defendant the reasonable travel expenses incurred by any such person in connection with fulfilling the Settling Defendant's cooperation obligations. Such reimbursement of travel expenses as set forth herein shall not exceed \$7,000 CAD per person. In no event shall Class Counsel be responsible for reimbursing such persons for time or services rendered.

(4) Nothing in this Settlement Agreement shall be construed to require the Settling Defendant to perform any act, including the transmittal or disclosure of any information, which would violate the law of this or any jurisdiction.

(5) Nothing in this Settlement Agreement shall require, or shall be construed to require, the Settling Defendant or any representative or employee of the Settling Defendant to disclose or produce any documents or information prepared by or for Counsel for the Settling Defendant, or that is not within the possession, custody or control of the Settling Defendant, or to disclose or produce any documents or information in breach of any order, regulatory directive, rule or law of this or any jurisdiction, or subject to solicitor-client privilege, litigation privilege, joint defence privilege or any other privilege, doctrine, or

law, or to disclose or produce any information or documents they obtained on a privileged or co-operative basis from any party to any action or proceeding who is not a Released Party.

(6) If any documents protected by any privilege and/or any privacy law or other rule or law of this or any applicable jurisdiction are accidentally or inadvertently disclosed or produced, such documents shall be promptly returned to the Settling Defendant and the documents and the information contained therein shall not be disclosed or used directly or indirectly, except with the express written permission of the Settling Defendant, and the production of such documents shall in no way be construed to have waived in any manner any privilege, doctrine, law, or protection attached to such documents.

(7) The Settling Defendant's obligations to cooperate as particularized in this Section shall not be affected by the release provisions contained in Section 6 of this Settlement Agreement. Unless this Settlement Agreement is not approved, is terminated or otherwise fails to take effect for any reason, the Settling Defendant's obligations to cooperate shall cease at the date of final judgment in the Proceedings against all Defendants.

(8) The provisions set forth in Section 4.1, 4.2 and 4.3 are the exclusive means by which the Plaintiffs, Class Counsel and Settlement Class Members may obtain discovery or information or documents from the Released Parties or their current or former officers, directors or employees. The Plaintiffs, Class Counsel and Settlement Class Members agree that they shall not pursue any other means of discovery against, or seek to compel the evidence of, the Released Parties or their current or former officers, directors, employees, agents, or counsel, whether in Canada or elsewhere and whether under the rules or laws of this or any other Canadian or foreign jurisdiction.

(9) In the event that the Settling Defendant materially breaches Sections 4.1, 4.2 or 4.3, the Plaintiffs may move before the Courts to enforce the terms of this Settlement Agreement.

(10) A material factor influencing the Settling Defendant's decision to execute this Settlement Agreement is their desire to limit the burden and expense of this litigation. Accordingly, Class Counsel agree to exercise good faith in seeking cooperation from the Settling Defendant, agree not to seek information that is unnecessary, cumulative or duplicative and agree otherwise to avoid imposing undue or unreasonable burdens or expense on the Settling Defendant.

(11) The scope of the Settling Defendant's cooperation under this Settlement Agreement shall be limited to the allegations asserted in the Actions as presently filed.

(12) The Settling Defendant makes no representation regarding and shall bear no liability with respect to the accuracy of or that they have, can or will produce a complete set of any of the documents or information described in this Section 4.1, and the failure to do so shall not constitute a breach or violation of this Settlement Agreement.

4.4 Confidentiality

(1) It is understood and agreed that all documents and information made available or provided by the Settling Defendant to the Plaintiffs and Class Counsel under this Settlement Agreement shall be used only in connection with the prosecution of the claims in the Actions, and shall not be used directly or indirectly for any other purpose, except to the extent that the documents or information are publicly available. The Plaintiffs and Class Counsel agree they will not disclose the terms of this settlement, the documents and information provided by the Settling Defendant beyond what is reasonably necessary for the prosecution of the Actions or as otherwise required by law, except to the extent that the documents or information are publicly available. Subject to the foregoing, Class Counsel shall take reasonable precautions to ensure and maintain the confidentiality of such documents and information,

of the terms of this settlement and of any work product of Class Counsel that discloses such documents and information.

(2) Nothing in Section 4.4(1) shall prevent Class Counsel from providing such information in filings with the Courts as may be necessary to assist the Courts and Class Members to understand the Settlement Agreement, but in any event, pursuant to Section 2.2(1) such filings shall not take place earlier than March 15, 2018.

SECTION 5 – OPTING OUT

(1) Persons seeking to opt-out of the Actions must do so by sending a written election to opt-out, signed by the Person or the Person's designee, by pre-paid mail, courier, fax or email to Class Counsel at an address to be identified in the notice described in Section 11.1(1).

(2) Any potential Settlement Class Member who validly opts out of the Actions shall not be able to participate in the Actions and no further right to opt out of the Actions will be provided.

(3) An election to opt-out will only be valid if it is postmarked on or before the Opt-Out Deadline to the designated address in the notice described in Section 11.1(1). Where the postmark is not visible or legible, the election to opt-out shall be deemed to have been postmarked four (4) business days prior to the date that it is received by Class Counsel.

(4) The written election to opt-out must contain the following information in order to be valid:

- (a) the Person's full name, current address and telephone number;
- (b) if the Person seeking to opt-out is a corporation, the name of the corporation and the position of the Person submitting the request to opt-out on behalf of the corporation;
- (c) a statement to the effect that the Person wishes to be excluded from the Actions; and
- (d) the reasons for opting out.

(5) Within thirty (30) days of the Opt-Out Deadline, Class Counsel shall provide to the Settling Defendant a report containing the names of each Person who has validly and timely opted out of the Actions, the reasons for the opt-out, if known, and a summary of the information delivered by such Person pursuant to this Section.

(6) With respect to any potential Settlement Class Member who validly opts-out from the Actions, the Settling Defendant reserves all of its legal rights and defences.

SECTION 6 – TERMINATION OF SETTLEMENT AGREEMENT

6.1 Right of Termination

(1) In the event that:

- (a) any Court declines to certify the Actions for the purposes of the Settlement Agreement;
- (b) any Court declines to dismiss or declare settled out of court the Actions against the Settling Defendant;
- (c) any Court declines to approve this Settlement Agreement or any material part hereof;

- (d) any Court approves this Settlement Agreement in a materially modified form;
- (e) any Court issues a settlement approval order that is materially inconsistent with the terms of the Settlement Agreement or not substantially in the form attached to this Settlement Agreement; or
- (f) any orders approving this Settlement Agreement made by the Courts do not become final orders;

the Plaintiffs and Settling Defendant shall have the right to terminate this Settlement Agreement by delivering a written notice pursuant to Section 14.18, within thirty (30) days following an event described above.

(2) Except as provided for in Section 6.4, if the Settlement Agreement is terminated, the Settlement Agreement shall be null and void and have no further force or effect, and shall not be binding on the terminating Parties, and shall not be used as evidence or otherwise in any litigation.

(3) Any order, ruling or determination made by any Court with respect to:

- (a) Class Counsel Fees or Class Counsel Disbursements; or
- (b) the opt-out process

shall not be deemed to be a material modification of all, or a part, of this Settlement Agreement and shall not provide any basis for the termination of this Settlement Agreement.

6.2 If Settlement Agreement is Terminated

(1) If this Settlement Agreement is not approved, is terminated in accordance with its terms or otherwise fails to take effect for any reason:

- (a) no motion to certify any of the Actions as a class proceeding on the basis of this Settlement Agreement, or to approve this Settlement Agreement, which has not been decided, shall proceed;
- (b) any order certifying an Action as a class proceeding on the basis of the Settlement Agreement or approving this Settlement Agreement shall be set aside and declared null and void and of no force or effect, and anyone shall be estopped from asserting otherwise; and
- (c) any prior certification of an Action as a class proceeding on the basis of this Settlement Agreement, including the definitions of the Settlement Class and the Common Issue pursuant to this Settlement Agreement, shall be without prejudice to any position that any of the Parties or Released Parties may later take on any issue in the Actions or any other litigation.

6.3 Allocation of Settlement Amount Following Termination

(1) If the Settlement Agreement is terminated, Class Counsel shall, within thirty (30) business days of the written notice advising that the Settlement Agreement has been terminated in accordance with its terms, return to the Settling Defendant the amount it has paid to Class Counsel, plus all accrued interest thereon.

6.4 Survival of Provisions After Termination

(1) If this Settlement Agreement is terminated or otherwise fails to take effect for any reason, the provisions of Sections 3.2(3), 6.1(2), 6.2, 6.3, 9.1, 9.2, and 11.1(3), and the definitions and Schedules applicable thereto shall survive the termination and continue in full force and effect. The definitions and Schedules shall survive only for the limited purpose of the interpretation of Sections 3.2(3), 6.1(2), 6.2, 6.3, 9.1, 9.2, and 11.1(3) within the meaning of this Settlement Agreement, but for no other purposes. All other provisions of this Settlement Agreement and all other obligations pursuant to this Settlement Agreement shall cease immediately.

SECTION 7 – RELEASES AND DISMISSALS

7.1 Release of Released Parties

(1) Upon the Effective Date, subject to Section 7.3, and in consideration of payment of the Settlement Amount and for other valuable consideration set forth in the Settlement Agreement, the Releasing Parties forever and absolutely release and forever discharge the Released Party from the Released Claims that any of them, whether directly, indirectly, derivatively, or in any other capacity, ever had, now have, or hereafter can, shall, or may have.

7.2 Release by Released Parties

(1) Upon the Effective Date, each Released Party forever and absolutely releases the Released Party from any and all claims for contribution or indemnity with respect to the Released Claims.

7.3 Covenant Not to Sue

(1) Upon the Effective Date, and notwithstanding Section 7.1, for any Settlement Class Members resident in any province or territory where the release of one tortfeasor is a release of all other tortfeasors, the Releasing Parties do not release the Released Party but instead covenant and undertake not to make any claim in any way or to threaten, commence, participate in or continue any proceeding in any jurisdiction against the Released Party in respect of or in relation to the Released Claims.

7.4 No Further Claims

(1) Upon the Effective Date, the Releasing Parties shall not now or hereafter institute, continue, maintain or assert, either directly or indirectly, whether in Canada or elsewhere, on their own behalf or on behalf of any class or any other Person, any action, suit, cause of action, claim or demand against any Released Party, or any other Person who may claim contribution or indemnity or other claims over relief from any Released Party, in respect of any Released Claim, except for the continuation of the Actions against the Non-Settling Defendants or unnamed alleged coconspirators that are not a Released Party or, if the Actions are not certified, the continuation of the claims asserted in the Actions on an individual basis or otherwise against any Non-Settling Defendant or unnamed co-conspirator that is not a Released Party. For greater certainty and without limiting the generality of the foregoing, the Releasing Parties shall not assert or pursue a Released Claim, against any Released Party under the laws of any foreign jurisdiction.

7.5 Dismissal of the Actions

(1) Upon the Effective Date, the BC Action and Ontario Action shall be dismissed with prejudice and without costs as against the Settling Defendant.

7.6 Dismissal of Other Actions

(1) Upon the Effective Date, each member of the Settlement Class shall be deemed to irrevocably consent to the dismissal, without costs and with prejudice, of his, her or its Other Actions against the Released Parties.

(2) Upon the Effective Date, all Other Actions by any Settlement Class Member shall be dismissed against the Released Parties, without costs and with prejudice.

7.7 Material Term

(1) The releases contemplated in this Section shall be considered a material term of the Settlement Agreement and the failure of any Court to approve the releases contemplated herein shall give rise to a right of termination pursuant to Section 6.1 of the Settlement Agreement.

SECTION 8 – BAR ORDER

8.1 Terms

(1) Bar orders shall be sought from the Courts providing for the following:

(a) if the BC Court or Ontario Court, as applicable, ultimately determines that there is a right of contribution and indemnity or other claim over, whether in equity or in law, by statute or otherwise:

(i) all claims for contribution, indemnity or other claims over, whether asserted, unasserted or asserted in a representative capacity, inclusive of interest, taxes and costs, relating to the Released Claims, which were or could have been brought in the Actions, or otherwise, by any Non-Settling Defendant, any named or unnamed co-conspirator that is not a Released Party or any other Person or party against a Released Party, or by a Released Party against any Non-Settling Defendant or any named or unnamed coconspirator that is not a Released Party, are barred, prohibited and enjoined in accordance with the terms of this Section (unless such claim is made in respect of a claim by a Person who has validly opted out of the Actions);

(ii) the Plaintiffs and Settlement Class Members shall not be entitled to claim or recover from the Non-Settling Defendants and/or named or unnamed co-conspirators and/or any other Person or party that is not a Released Party that portion of any damages (including punitive damages, if any), restitutionary award, disgorgement of profits, interest and costs (including investigative costs claimed pursuant to Section 36 of the *Competition Act*) that corresponds to the Proportionate Liability of the Released Parties proven at trial or otherwise;

(iii) the Plaintiffs and Settlement Class Members shall limit their claims against the Non-Settling Defendants and/or named or unnamed co-conspirators and/or any other Person or party that is not a Released Party to include, and shall be entitled to recover from the Non-Settling Defendants and/or named or unnamed co-conspirators and/or any other Person or party that is not a Released Party, only such claims for damages (including punitive damages, if any), restitutionary award, disgorgement of profits, costs, and interest attributable to the aggregate of the several liability of the Non-Settling Defendants and/or named or unnamed co-conspirators and/or any other Person or party that is not a Released Party to

the Plaintiffs and Settlement Class Members, if any, and, for greater certainty, the Settlement Class Members shall be entitled to claim and recover on a joint and several basis as between the Non-Settling Defendants and/or named or unnamed co-conspirators and/or any other Person or party that is not a Released Party, to the extent provided by law; and

- (iv) the Courts shall have full authority to determine the Proportionate Liability of the Released Party at the trial or other disposition of the relevant Actions, whether or not the Released Parties remain in the relevant Action or appear at the trial or other disposition, and the Proportionate Liability of the Released Parties shall be determined as if the Released Party is party to the relevant Action and any determination by the Court in respect of the Proportionate Liability of the Released Parties shall only apply in the relevant Action and shall not be binding on the Released Party in any other proceeding;

8.2 Claims Against Other Entities Reserved

- (1) Except as provided herein, this Settlement Agreement does not settle, compromise, release or limit in any way whatsoever any claim by the Releasing Parties against any Person other than the Released Party.

8.3 Material Term

- (1) The Parties acknowledge that the bar orders and reservations of rights contemplated in this Section shall be considered a material term of the Settlement Agreement and the failure of any Court to approve the bar orders and reservations of rights contemplated herein shall give rise to a right of termination pursuant to Section 6.1 of the Settlement Agreement.

SECTION 9 – EFFECT OF SETTLEMENT

9.1 No Admission of Liability

- (1) The Plaintiffs and the Released Party expressly reserve all of their rights if the Settlement Agreement is not approved, is terminated, or otherwise fails to take effect for any reason, further, whether or not the Settlement Agreement is finally approved, is terminated, or otherwise fails to take effect for any reason, this Settlement Agreement and anything contained herein, and any and all negotiations, documents, discussions and proceedings associated with this Settlement Agreement, and any action taken to carry out this Settlement Agreement, shall not be deemed, construed, or interpreted to be an admission of any violation of any statute or law, or of any wrongdoing or liability by the Released Parties, or of the truth of any of the claims or allegations contained in the Actions, or any other pleading filed by the Plaintiffs.

9.2 Agreement Not Evidence

- (1) The Parties agree that, whether or not it is terminated, this Settlement Agreement and anything contained herein, and any and all negotiations, documents, discussions and proceedings associated with this Settlement Agreement, and any action taken to carry out this Settlement Agreement, shall not be referred to, offered as evidence or received in evidence in any pending or future civil, criminal or administrative action or proceeding, except in a proceeding to approve and/or enforce this Settlement Agreement, to defend against the assertion of Released Claims, as necessary in any insurance-related proceeding, or as otherwise required by law.

9.3 No Further Litigation

(1) Neither Class Counsel, nor anyone currently or hereafter employed by or a partner with Class Counsel, may directly or indirectly participate or be involved in or in any way assist with respect to any claim made or action commenced by any Person which relates to or arises from the Released Claims, except in relation to the continued prosecution of the Actions against any Non-Settling Defendant or unnamed co-conspirators that are not Released Parties or, if the Actions are not certified, the continuation of the claims asserted in the Actions on an individual basis or otherwise against any Non-Settling Defendant or unnamed co-conspirator that is not a Released Party. Moreover, these Persons may not divulge to anyone for any purpose any information obtained in the course of the Actions or the negotiation and preparation of this Settlement Agreement, except to the extent such information is otherwise publicly available or unless ordered to do so by a court, subject to Section 4.2 of this Settlement Agreement.

(2) Section 9.3(1) shall be inoperative to the extent that it is inconsistent with BC Counsel's obligations under Rule 3.2-10 of the *Code of Professional Conduct for British Columbia*.

SECTION 10 – CERTIFICATION FOR SETTLEMENT ONLY

(1) The Parties agree that the Actions shall be certified as class proceedings as against the Settling Defendant solely for purposes of settlement of the Actions and the approval of this Settlement Agreement by the Courts.

(2) The Plaintiffs agree that, in the motions for certification of the Actions as class proceedings for settlement purposes and for the approval of this Settlement Agreement, the only common issue that they will seek to define is the Common Issue and the only classes that they will assert are the Settlement Classes.

(3) The Parties agree that the certification of the Actions as against the Settling Defendant for the purpose of implementing this Settlement Agreement, shall not derogate in any way from the rights of the Plaintiffs as against the Non-Settling Defendants, except as expressly set out in this Settlement Agreement.

SECTION 11 – NOTICE TO SETTLEMENT CLASS

11.1 Notices Required

(1) The proposed Settlement Classes shall be given a single notice of (i) the certification of the Actions as class proceedings as against the Settling Defendant for settlement purposes; (ii) the hearings at which the Courts will be asked to approve the Settlement Agreement; and (iii) if they are brought with the hearings to approve the Settlement Agreement, the hearings to approve Class Counsel Fees.

(2) The proposed Settlement Classes shall also be given a notice of approval of the Settlement Agreement.

(3) If this Settlement Agreement is not approved, is terminated, or otherwise fails to take effect, the proposed Settlement Classes shall be given notice of such event.

11.2 Form and Distribution of Notices

(1) The notices shall be in a form agreed upon by the Parties and approved by the Courts or, if the Parties cannot agree on the form of the notices, the notices shall be in a form ordered by the Courts.

(2) The notices shall be disseminated by a method agreed upon by the Parties and approved by the Courts or, if the Parties cannot agree on a method for disseminating the notices, the notices shall be disseminated by a method ordered by the Courts.

SECTION 12 - ADMINISTRATION AND IMPLEMENTATION

(1) Except to the extent provided for in this Settlement Agreement, the mechanics of the implementation and administration of this Settlement Agreement shall be determined by the Courts on motions brought by Class Counsel.

SECTION 13 – CLASS COUNSEL FEES, DISBURSEMENTS AND ADMINISTRATIVE EXPENSES

(1) The Settling Defendant shall not be liable for any fees, disbursements or taxes of any of Class Counsel's, the Plaintiffs' or Settlement Class Members' respective lawyers, experts, advisors, agents, or representatives.

(2) Class Counsel shall pay the costs of the notices required by Section 10 and any costs of translation required by Section 14.12 from the Trust Account, as they become due. The Released Parties shall not have any responsibility for the costs of the notices or translation.

(3) Class Counsel may seek the Courts' approval to pay Class Counsel Disbursements and Class Counsel Fees contemporaneous with seeking approval of this Settlement Agreement. Class Counsel Disbursements and Class Counsel Fees shall be reimbursed and paid solely out of the Settlement Fund after the Effective Date. No Class Counsel Fees shall be paid from the Settlement Fund prior to the Effective Date.

(4) Except as provided herein, Administration Expenses may only be paid out of the Trust Account after the Effective Date.

(5) In the event that some of the funds remain in the Trust Account after payment of Class Counsel Disbursements, Class Counsel Fees and Administrative Expenses, Class Counsel shall seek direction from the Courts regarding the distribution of the remaining funds.

SECTION 14 – MISCELLANEOUS

14.1 Motions for Directions

(1) Class Counsel or the Settling Defendant may apply to the Courts and/or such other courts as may be required by the Courts for directions in respect of the interpretation implementation and administration of this Settlement Agreement.

(2) All motions contemplated by this Settlement Agreement shall be on notice to the Parties.

14.2 Released Party has No Liability for Administration

(1) The Released Party has no responsibility for and no liability whatsoever with respect to the administration of the Settlement Agreement.

14.3 Headings, etc.

(1) In this Settlement Agreement:

- (a) the division of the Settlement Agreement into sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Settlement Agreement; and
- (b) the terms "this Settlement Agreement," "hereof," "hereunder," "herein," and similar expressions refer to this Settlement Agreement and not to any particular section or other portion of this Settlement Agreement.

14.4 Computation of Time

- (1) In the computation of time in this Settlement Agreement, except where a contrary intention appears,
 - (a) where there is a reference to a number of days between two events, the number of days shall be counted by excluding the day on which the first event happens and including the day on which the second event happens, including all calendar days; and
 - (b) only in the case where the time for doing an act expires on a holiday as "holiday" is defined in the British Columbia Supreme Court Civil Rules or the Ontario Rules of Civil Procedure, the act may be done on the next day that is not a holiday.

14.5 Ongoing Jurisdiction

- (1) Each of the Courts shall retain exclusive jurisdiction over the Action commenced in its jurisdiction, the Parties and the Class Counsel Fees in that proceeding.
- (2) No Party shall ask a Court to make any order or give any direction in respect of any matter of shared Jurisdiction unless that order or direction is conditional upon a complementary order or direction being made or given by the other Court(s) with which it shares Jurisdiction over that matter.

14.6 Governing Law

- (1) Subject to Section 14.6(2), this Settlement Agreement shall be governed by and construed and interpreted in accordance with the laws of the Province of British Columbia.
- (2) Notwithstanding Section 14.6(1), for matters relating specifically to the Ontario Action, the Ontario Court shall apply the law of its own jurisdiction.

14.7 Entire Agreement

- (1) This Settlement Agreement constitutes the entire agreement among the Parties, and supersedes all prior and contemporaneous understandings, undertakings, negotiations, representations, promises, agreements, agreements in principle and memoranda of understanding in connection herewith. None of the Parties will be bound by any prior obligations, conditions or representations with respect to the subject matter of this Settlement Agreement, unless expressly incorporated herein.

14.8 Amendments

- (1) This Settlement Agreement may not be modified or amended except in writing and on consent of all Parties, and any such modification or amendment must be approved by the Courts with Jurisdiction over the matter to which the amendment relates.

14.9 Binding Effect

(1) This Settlement Agreement shall be binding upon, and enure to the benefit of, the Plaintiffs, the Settlement Class Members, the Settling Defendant, the Releasing Parties, the Released Party and all of their successors and assigns. Without limiting the generality of the foregoing, each and every covenant and agreement made by the Plaintiffs shall be binding upon all Releasing Parties and each and every covenant and agreement made by the Settling Defendant shall be binding upon all of the Released Party.

14.10 Counterparts

(1) This Settlement Agreement may be executed in counterparts, all of which taken together will be deemed to constitute one and the same agreement, and a facsimile or PDF signature shall be deemed an original signature for purposes of executing this Settlement Agreement.

14.11 Negotiated Agreement

(1) This Settlement Agreement has been the subject of negotiations and discussions among the undersigned, each of which has been represented and advised by competent counsel, so that any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter of this Settlement Agreement shall have no force and effect. The Parties further agree that the language contained in or not contained in previous drafts of this Settlement Agreement, or any agreement in principle, shall have no bearing upon the proper interpretation of this Settlement Agreement.

14.12 Language

(1) The Parties acknowledge that they have required and consented that this Settlement Agreement and all related documents be prepared in English; ies parties reconnaissent avoir exigé que la présente convention et tous ies documents connexes soient rédigés en anglais. Nevertheless, if required to by the Courts, Class Counsel and/or a translation firm selected by Class Counsel shall prepare a French translation of the Settlement Agreement, the cost of which shall be paid from the Settlement Amount. In the event of any dispute as to the interpretation or application of this Settlement Agreement, only the English version shall govern.

14.13 Recitals

(1) The recitals to this Settlement Agreement are true and form part of the Settlement Agreement.

14.14 Schedules

(1) The schedules annexed hereto form part of this Settlement Agreement.

14.15 Acknowledgements

- (1) Each of the Parties hereby affirms and acknowledges that:
- (a) he, she or a representative of the Party with the authority to bind the Party with respect to the matters set forth herein has read and understood the Settlement Agreement;
 - (b) the terms of this Settlement Agreement and the effects thereof have been fully explained to him, her or the Party's representative by his, her or its counsel;

- (c) he, she or the Party's representative fully understands each term of the Settlement Agreement and its effect; and
- (d) no Party has relied upon any statement, representation or inducement (whether material, false, negligently made or otherwise) of any other Party, beyond the terms of the Settlement Agreement, with respect to the first Party's decision to execute this Settlement Agreement.

14.16 Authorized Signatures

(1) Each of the undersigned represents that he or she is fully authorized to enter into the terms and conditions of, and to execute, this Settlement Agreement on behalf of the Parties identified above their respective signatures and their law firms.

14.17 Notice

(1) Where this Settlement Agreement requires a Party to provide notice or any other communication or document to another, such notice, communication or document shall be provided by email, facsimile or letter by overnight delivery to the representatives for the Party to whom notice is being provided, as identified below:

For the Plaintiffs and for Class Counsel

David A. Klein
Klein Lawyers LLP
1385 West 8th Avenue #400
Vancouver, BC V6H 3V9

Tel 604-874-7171
Fax 604-874-7180
dklein@callkleinlawyers.com

For the Settling Defendant

Gregory Hoff
Gowlings WLG
500 Burrard Street, Suite 2300, Bentall 5
Vancouver, BC V6C 2B5
Tel 604-683-6498
Fax 604-683-3558
Gregory.Hoff@gowlingwlg.com

14.18 Execution Date


(1) The Parties have executed this Settlement Agreement as of the date on the cover page.

The Plaintiffs on their own behalf and on behalf of the Settlement Class, by their counsel:

Name of Authorized Signatory:

DOUGLAS LENNOX

Signature of Authorized Signatory:



SAM YANG FOODS CO., LTD., by their counsel:

Name of Authorized Signatory:

Gregory S. Hoff

Signature of Authorized Signatory:



Schedule B to Order of Justice Glustein – Hearing Notice

NOTICE OF HEARING ON CLASS CERTIFICATION AND SETTLEMENT APPROVAL

Have you purchased Korean Ramen Noodles between May 1, 2001 and December 31, 2010:

This notice may affect your rights. Please read carefully.

Two proposed class action lawsuits, *Kozma et al. v. Nong Shim Co., Ltd., et al.* and *Jooli Park v. Nong Shim Co. Ltd et al.*, were filed in the Supreme Court of British Columbia and the Ontario Superior Court of Justice, respectively. These proposed class actions regard allegations that the manufacturers of Korean Ramen Noodles, including Nong Shim, Ottogi, Paldo, Korea Yakult, and Samyang, conspired to illegally fix, raise, maintain, and/or stabilize the price of instant noodle soup, including branded bag, pouch, cup or bowl ramen (“Korean Ramen Noodles”).

Defendant Samyang Foods Co., Ltd., while not admitting liability, has agreed to consent to the certification of the *Kozma* Action and the *Park* Action as class actions for settlement purposes and has agreed to settle the *Kozma* Action and the *Park* Action. The proposed class actions will be heard for certification as against the settling Defendant Samyang Foods Co, Ltd., for the purposes of implementing the settlement agreement. For a copy of the settlement agreement, or for more information, please contact Class Counsel or the Claims Administrator listed below.

Who is a Class Member and Potentially Eligible to Participate in the Settlement?

The proposed class includes all persons resident in British Columbia, Ontario, or elsewhere in Canada, who purchased, either directly or indirectly, Korean Ramen Noodles in Canada between May 1, 2001 and December 31, 2010. You are affected by the proposed class actions and are a “member” of the BC Class or Ontario Class if you purchased Korean Ramen Noodles in Canada during the relevant period made by any of the following companies: Nong Shim, Ottogi, Paldo, Korea Yakult, and Samyang.

The proposed BC Class includes BC residents with a right to Opt-Out of the BC Class and settlement. The proposed Ontario Class includes: (i) Ontario residents with a right to Opt-Out of the Ontario Class and settlement, and (ii) non-Ontario and non-BC residents with a right to Opt-Out of the Ontario Class and settlement.

The Terms of Settlement

The settlement provides that the Settling Defendant has agreed to pay \$288,586.98 in compensation to the class, and also to provide co-operation to the class in continuing with their lawsuit against the other Non-Settling Defendants. No monies are to be distributed directly to class members at this time, but rather, a distribution shall require further order of the court.

Court Hearing and Your Right to Participate

Motions to certify the *Kozma* Action and the *Park* Action as class actions and to approve the settlement agreement are to be heard by the BC Court in Vancouver on [date] at [time] and at [place] and by the Ontario Court in Toronto on [date] at [time] at [place], respectively. Class Counsel will also ask the court to approve payment of Class Counsel’s disbursements.

Persons who will be Class Members if the Courts certify the class actions who do not oppose the settlement need not appear at the hearing or take any other action at this time to indicate their desire to participate in the class and/or in the settlement.

All persons who will be Class Members if the Courts certify the class actions have the right to let the Courts know about any objection they have to the settlement or payment of disbursements by delivering a letter to Class Counsel on or before [date]. A proposed class member who wishes to object to the settlement or the fees shall provide the following information in his or her letter:

- (a) The full name, current mailing address, telephone number, and email address;
- (b) If the person is writing on behalf of a company, the name of the company and the person's position at the company;
- (c) A brief statement of the nature and reasons for the objection;
- (d) A declaration that the person believes he or she will be a member of the proposed BC Class, and, if available, copies of records of his or her purchases of Korean Ramen Noodles between May 1, 2001 and December 31, 2010;
- (e) Whether the person intends to appear at the hearing on their own or through a lawyer and if by lawyer, the name, address, telephone number, and email address of the lawyers; and,
- (f) A statement that the foregoing information is true and correct.

For Additional Information and a Copy of the Settlement Agreement:

The settlement agreement can be viewed at the following website: [www. XXX]

Please contact Class Counsel or the Claims Administrator below:

Class Counsel in the *Kozma* Action
and the *Park* Action:

Klein Lawyers LLP
Suite 400
1385 West 8th Avenue
Vancouver, BC V6H 3V9
Telephone: 604-874-7171
Facsimile: 604-874-7180
www.callkleinlawyers.com

Claims Administrator:

Crawford Class Action Services
3-503 133 Weber St N
Waterloo ON N2J 3G9
Toll free: TBA
TTY: 1-877-627-7027
Facsimile: 1-888-842-1332
Email: TBA

Schedule C to Order of Justice Glustein – Notice Program

PROGRAM FOR DISSEMINATION OF CLASS NOTICES

The Notices of Hearing on Class Proceeding and Settlement Approval, the Short Form Notice of Hearing on Class Proceeding and Settlement Approval, and the Notices of Class Certification and Settlement Approval (“Notices”) shall be disseminated to the putative BC Class and Ontario Class, in BC, Ontario, and nationwide in Canada by the following means:

1. Class Counsel shall send copies of the Notices by mail or email to all class members who have contacted Class Counsel regarding this action and provided their contact information.
1. Class Counsel shall post copies of the Notices to its website.
2. Class Counsel shall forward copies of the Notices to all counsel in Canada who, to Class Counsel’s knowledge, have filed actions on behalf of their clients relating to the price fixing of Korean Ramen Noodles.
3. Class Counsel shall arrange for publication of the Notices on online advertising networks, social media networks, and PR Newswire, with such publication to occur as soon as reasonably feasible following the date of the Final Orders. Ads will be served on thousands of national and local websites in Canada, such as:
 - (a) Yahoo.com
 - (b) Huffingtonpost.ca
 - (c) HGTV.com
 - (d) Accuweather.com
 - (e) Canada.com
 - (f) TSN.ca
 - (g) Canadianautoworld.ca
 - (h) Foodnetwork.ca
 - (i) Koreatimes.net
 - (j) Torontosun.com
 - (k) Lapresse.ca
 - (l) Torntosun.com
 - (m) Facebook.com

(n) Instagram.com

(o) Newswire.ca

4. Class Counsel shall arrange for publication of the Short Form Notice of Hearing on Class Proceeding and Settlement Approval in Korean print media, with such publication to occur as soon as reasonably feasible following the date of the Final Orders. Publication of the Short Form Notice of Hearing on Class Proceeding and Settlement Approval will appear in the following publications (single insertion):

(a) *vanChosun* in Vancouver

(b) *Korea Times Daily* in Toronto

Schedule D to Order of Justice Glustein – Amended Statement of Claim

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

JOOLI PARK

Plaintiff

-and-

NONG SHIM CO., LTD., NONGSHIM AMERICA, INC., OTTOGI CORPORATION,
OTTOGI AMERICA, INC., SAMYANG FOODS CO., LTD., SAM YANG FOODS CO., LTD.,
KOREA YAKULT CO., LTD. AND PALDO CO., LTD.

Defendants

Proceeding under the *Class Proceedings Act, 1992*

AMENDED STATEMENT OF CLAIM

TO THE DEFENDANTS:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiff. The Claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a Statement of Defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the Plaintiff's lawyer or, where the Plaintiff does not have a lawyer, serve it on the Plaintiff, and file it, with proof of service, in this Court office, **WITHIN TWENTY DAYS** after this Statement of Claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your Statement of Defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a Statement of Defence, you may serve and file a Notice of Intent to Defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your Statement of Defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT WILL BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY

LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date of Issue: June 19, 2017

Issued by: _____
Local Registrar

Address of court office:
393 University Avenue
Toronto, Ontario
M5G 1E6

TO: Nong Shim Co., Ltd.
c/o Hyun Seong Kim
5369 Fasdon Court
Mississauga, Ontario L5V 1Y8.

AND TO: Nongshim America, Inc.
c/o Sung Jin Park
6255 Cantay Road, Unit 4
Mississauga, Ontario L5R 3Z4

AND TO : Ottogi Corporation
405 Heungan-daero, Tongan-gu, Anyang
Kyonggi-do 431070, South Korea.

AND TO : Ottogi America, Inc.
c/o Young Jae Ham
1650 W El Segundo Blvd
Gardena, California 90249, USA.

AND TO : ~~Samyang~~ ~~Sam Yang~~ Foods Co., Ltd.
104 Opaesan-ro 3-gil, Songbuk-gu
Seoul 136754, South Korea.

AND TO : Korea Yakult Co., Ltd.
577 Gangnam-daero, Socho-gu
Seoul 137904, South Korea

AND TO: Paldo Co., Ltd.
7FI Wooduck Bldg, 577 Gangnam-daero, Socho-gu
Seoul 137904, South Korea

CLAIM

- I. The Plaintiff claims:
 - (a) an order certifying this action as a class proceeding;
 - (b) general damages and special damages for civil conspiracy and unlawful interference with economic interests;
 - (c) statutory damages pursuant to section 36 of the *Competition Act*, RSC 1985, c C-34 for losses and damages suffered as a result of conduct that is contrary to Part VI of the *Competition Act*, RSC 1985, c C-34;
 - (d) restitutionary damages for unjust enrichment and waiver of tort;
 - (e) punitive damages;
 - (f) pre-judgment and post-judgment interest;
 - (g) investigative costs and the costs of this proceeding on a full-indemnity basis pursuant to section 36 of the *Competition Act*, RSC 1985, c C-34; and
 - (h) such further and other relief this Honourable Court deems just.

OVERVIEW

I. Beginning at least as early as December 2000 and continuing until at least July 2012 (the “Class Period”), the Defendants (as defined at paragraphs 8 to 22 below) conspired with each other and various other corporations, persons, partnerships, firms and/or individuals not named in this lawsuit, the identities of which are not presently known, to 1) fix, maintain, increase or control the price for the supply of Korean Noodles (as defined at paragraphs 25 to 27 below), 2) to allocate sales, territories, customers or markets for the production or supply of Korean Noodles, and/or 3) to fix, maintain, control, prevent, lessen or eliminate the production or supply of Korean Noodles (collectively the “Conspiracy”, as defined at paragraphs 34 to 53 below).

2. The Conspiracy was targeted at wholesalers and other vendors who purchased Korean Noodles from the Defendants or one of them for re-sale.
3. As a consequence of the Defendants' collusive conduct, the Defendants and their co-conspirators eliminated or reduced competition in the Korean Noodles industry. Through their conduct, the Defendants effectuated an overcharge for the Korean Noodles.
4. The artificially inflated prices that vendors paid for the Korean Noodles were passed on to indirect purchasers of the Korean Noodles, namely customers who purchased Korean Noodles from grocery stores and snack vendors.
5. The Defendants' Conspiracy therefore raised prices for all members of the proposed class, all of whom suffered losses as a consequence of the Defendants' unlawful conduct.

THE PARTIES

The Plaintiff and the Class

6. The Plaintiff, Jooli Park, is a resident of Toronto, Ontario. She purchased Korean Noodles regularly during the Class Period from a variety of vendors in Ontario.
7. The Plaintiff brings this claim on behalf of herself and on behalf of a class of persons who purchased, either directly or indirectly, the Korean Noodles ("Class Members", to be defined in the Plaintiff's notice of motion for class certification).

The Nongshim Defendants

8. The Defendant, Nong Shim Co., Ltd. ("Nongshim"), is a company existing under the laws of South Korea with a registered legal address at 112 Yeouidaebang-ro, Tongjak-gu, Seoul 156709, South Korea. Nongshim is a leading food company in South Korea with a dominant market share of approximately 70% of the Korean Noodle business in Korea. As of July 20, 2015, Nongshim's stated capital was US\$53,537,967. Nongshim started in 1965 and, according to its website, "became the #1 noodle and snack manufacturer in the country". Nongshim's website provides: "Our vision is to become a global food company that provides a wide variety of unique and excellent quality products. We are committed to reach our vision with the focus on the most important part of the company: the consumers.... Through the continuous efforts of strategic sales operation and the commitment to provide better products and services, today, Nongshim products are available in most retail outlets throughout North America and over 80 countries around the world!".

9. Nongshim is registered in Ontario with an address for service c/o Hyun Seong Kim at 5369 Fasdon Court in Mississauga, Ontario L5V 1Y8.

10. The Defendant, Nongshim America, Inc. ("Nongshim America"), is a California company with an address for service of process c/o CT Corporation System at 818 W Seventh Street, Suite 930 in Los Angeles, California 90017, USA. Nongshim America has its headquarters in Rancho Cucamonga, California. According to its website, Nongshim America "was established in 1994 as part of the global expansion plan to reach out to the consumers in North America. In 2005, Nongshim America, Inc. built a state-of-the-art facility in southern

California to serve the fast growing demands for [its] award-winning products”. Nongshim America’s manufacturing facility has an annual production capacity of approximately 200 million Korean Noodles. Nongshim America is wholly owned by the California company Nongshim Holdings USA, Inc. who, in turn, is wholly owned by Nongshim.

11. Nongshim America is registered in Ontario with an address for service c/o Sung Jin Park at 6255 Cantay Road, Unit 4 in Mississauga, Ontario L5R 3Z4.

12. The companies named and described in paragraphs 8 through 11 of this pleading are collectively referred to herein as the “Nongshim Defendants”. Each of the Nongshim Defendants was an agent of the other for the purposes of the manufacture, distribution, marketing and/or sale of the Korean Noodles.

13. At all material times, the Nongshim Defendants functioned as a joint enterprise in the Conspiracy to suppress and eliminate competition in the Korean Noodle industry. The business of each of the Nongshim Defendants is inextricably interwoven, and they operate collectively for their mutual benefit and profit.

The Ottogi Defendants

14. The Defendant, Ottogi Corporation (“Ottogi”), is a South Korean company with a registered legal address at 405 Heungan-daero, Tongan-gu, Anyang, Kyonggi-do 431070, South Korea. Ottogi was founded in 1969 under its original name, Pung-Lim Company. Ottogi manufactures various food products, including Korean Noodles. Its 2014 annual net income was

₩87,711,138,693. Its website notes: “We will rise as the leading Asian food company in the continent of America and become the cornerstone in globalizing our Ottogi Corporation to expand as a worldwide company”.

15. The Defendant, Ottogi America, Inc. (“Ottogi America”) is a California company with an address for service of process c/o Young Jae Ham at 1650 W El Segundo Blvd. in Gardena, California 90249, USA. According to its website: “Ottogi America distributes [Ottogi] products all over the United States and Canada.... Ottogi America, as a wide-ranging food distributor, has acquired top food technology and brand name from Ottogi corporation to bring competitive products that will lead North and South America’s Korean Food Industry”. Ottogi America is wholly owned by Ottogi.

16. The companies named and described in paragraphs 14 and 15 of this pleading are collectively referred to herein as the “Ottogi Defendants”. Each of the Ottogi Defendants was an agent of the other for the purposes of the manufacture, distribution, marketing and/or sale of the Korean Noodles.

17. At all material times, the Ottogi Defendants functioned as a joint enterprise in the Conspiracy to suppress and eliminate competition in the Korean Noodle industry. The business of each of the Ottogi Defendants is inextricably interwoven, and they operate collectively for their mutual benefit and profit.

Samyang Sam-Yang

18. The Defendant, Samyang Sam-Yang Foods Co., Ltd. ("Samyang Sam-Yang"), is a South Korean company with a registered legal address at 104 Opaesan-ro 3-gil, Songbuk-gu, Seoul 136754, South Korea. The cover page of Samyang's Sam-Yang's website reads: "Honest [sic] & Integrity". Samyang Sam-Yang was established in 1961. On its website, Samyang Sam-Yang notes that it "produced the first ramen in Korea" in 1963 and "produced the first cup type noodle in Korea" in 1972. Samyang's Sam-Yang Chairman, In-Chang Chun, states: "We of Samyang Foods Group have dedicated to the promotion of dietary life culture towards supplying most nutritious and delicious natural foods in safe and convenient manner in order to make stable progress of the enterprise in earnest with the creed of honesty and trust. With the main product of instant noodle called Ramen produced since the foundation of the company, Samyang Foods Co., Ltd. has grown to one of the leading general food makers in Korea". As of July 21, 2015, Samyang's Sam-Yang stated capital was US\$57,999,465.

The Yakult Defendants

19. The Defendant, Korea Yakult Co., Ltd. ("Yakult"), is a South Korean company with a registered legal address at 577 Gangnam-daero, Socho-gu, Seoul 137904, South Korea. Yakult is a manufacturer of various food products, including Korean Noodles. Yakult had a 2014 annual net income of ₩57,739,246,270.

20. The Defendant, Paldo Co., Ltd. ("Paldo"), is a South Korean company with a registered legal address at 7FI Wooduck Bldg, 577 Gangnam-daero, Socho-gu, Seoul 137904, South Korea. Paldo is registered to do business in California with an address for service of process c/o Minsu

Kang at 3700 Wilshire Blvd., Suite 909 in Los Angeles, California 90010, USA. Paldo is a manufacturer of various food products, including Korean Noodles. As of July 20, 2015, Paldo had a stated capital of US\$89,229,946. Prior to 2012, when Paldo was registered to do business in California, Yakult did business in California as Paldo America, Inc., which has now been dissolved.

21. The companies named in paragraphs 19 and 20 of this pleading are collectively referred to herein as the Yakult Defendants. Each of the Yakult Defendants was an agent of the other for the purposes of the manufacture, distribution, marketing and/or sale of the Korean Noodles.

22. At all material times, the Yakult Defendants functioned as a joint enterprise in the Conspiracy to suppress and eliminate competition in the Korean Noodle industry. The business of each of the Yakult Defendants is inextricably interwoven, and they operate collectively for their mutual benefit and profit.

Un-named co-conspirators

23. Other corporations, persons, partnerships, firms and/or individuals not named in this pleading, because their identities are currently unknown to the Plaintiff, participated as co-conspirators in the Conspiracy and performed acts and made statements and agreements in furtherance of the Conspiracy (the "Co-conspirators"). The Co-conspirators were all persons whom it is reasonable to believe would have, in the absence of the Conspiracy, been likely to have competed with the Defendants with respect to the Korean Noodles.

24. Whenever reference is made in this pleading to any act, communication, agreement or transaction of a corporation, the Plaintiff is alleging that the corporation engaged in the act, communication, agreement or transaction by or through its directors, officers, employees and/or agents while they were actively engaged in the direction, management and/or control of the corporation's business.

KOREAN NOODLES

25. "Korean Noodles", as used in this pleading, refer to instant ramen noodles manufactured by any of the Defendants or their subsidiaries or affiliates. Korean Noodles are dried and pre-cooked noodles usually sold with flavouring powder and/or seasoning oil. Korean Noodles are sold either in a packet or in a disposable cup or bowl. The two main ingredients used to produce Korean Noodles are wheat flour and palm oil. Korean Noodles in packets can be cooked within minutes in boiling water, after which the seasoning and dehydrated vegetables are added. Korean Noodles in cups and bowls can be prepared by adding hot water and the seasoning to the prepackaged container which already contains the dehydrated vegetables.

26. Korean Noodles are distinct from other types of noodles sold in Canada. Korean Noodles contain unique spices which are typically hotter and have a bolder flavour than other instant noodles from Japan, China or elsewhere. There are various types of Korean Noodles including but not limited to: Kimchi Ramen, Udon, Kalgugusu, Chajang, Champong, Bibimmyun, Yukgaejang, Potato Ramen, Soon Noodle, Shin Black, Shin Ramyun, Meal Noodle, Cup Ramen, Japaggetti and Bowl Noodle.

27. The Korean Noodles share the same general characteristics, including manufacturing processes, ingredients, flavour profiles, packaging, product positioning and distribution systems. There is minimal variation in the quality of Korean Noodle products.

THE KOREAN NOODLE MARKET

28. As the Korean Noodle market in South Korea became saturated, the Defendants sought to sell more Korean Noodles outside of Korea, including in Canada and the United States.

29. The Defendants manufactured the Korean Noodles in South Korea, China, the United States, Canada and elsewhere and then distributed the Korean Noodles to various wholesalers and other vendors, *inter alia* 1) in Canada for distribution and sale in Canada, 2) in the United States for distribution and sale in Canada, 3) in Canada for distribution and sale in the United States and elsewhere, 4) in South Korea for distribution and sale in Canada and elsewhere.

30. During the Class Period, the Defendants sold millions of dollars' worth of Korean Noodles in Canada.

31. The affected vendors included but were not limited to: Costco, Walmart, Safeway, Superstore, Save-On-Foods, T & T, 7 Eleven, Loblaws, Shoppers Drug Mart, London Drugs, Metro, A & P, PriceSmart, Extra Foods, No Frills, IGA, Sobeys, Thrifty Foods and certain of their subsidiaries, affiliates, and suppliers in Canada.

32. The identities of all affected vendors who entered into supply contracts with the Nongshim Defendants, the Ottogi Defendants, Samyang Sam-Yang and/or the Yakult Defendants and their Co-conspirators are currently unknown to the Plaintiff.

33. The sale of the Korean Noodles – and the Conspiracy which led to their artificially inflated prices – resulted in substantial revenues for the Nongshim Defendants, the Ottogi Defendants, Samyang Sam-Yang and the Yakult Defendants. The revenues of these companies were increased as a consequence of the Conspiracy.

THE CONSPIRACY

34. The Nongshim Defendants, the Ottogi Defendants, Samyang Sam-Yang and the Yakult Defendants voluntarily colluded as between themselves and with other Co-conspirators to use unlawful means to injure the economic interests of 1) wholesalers and other vendors who purchased the Korean Noodles directly from the Defendants or one of them, and 2) indirect purchasers of the Korean Noodles.

35. Beginning at least as early as December 2000 and continuing until at least July 2012, the exact dates being unknown to the Plaintiff, the Nongshim Defendants, the Ottogi Defendants, Samyang Sam-Yang and the Yakult Defendants knowingly entered into a continuing agreement, understanding and concert of action to 1) increase or maintain the prices of the Korean Noodles, and/or 2) suppress and eliminate competition with respect to the manufacture, marketing, sale and/or distribution of the Korean Noodles (the “Agreement”), and to conceal their Agreement from wholesalers, vendors, end-users and other stakeholders.

36. The substantial terms of the Agreement included: 1) fixing, maintaining, increasing or controlling the price for the supply of Korean Noodles sold to wholesalers and other vendors in Canada, the United States, South Korea and elsewhere, 2) allocating sales, territories, customers or markets for the production or supply Korean Noodles sold to wholesalers and other vendors in Canada, the United States, South Korea and elsewhere, and/or 3) fixing, maintaining, controlling, preventing, lessening or eliminating the production or supply of Korean Noodles sold to wholesalers and other vendors in Canada, the United States, South Korea and elsewhere.

37. With respect to the Conspiracy, "price" includes any discount, rebate, allowance, price concession or other advantage in relation to the supply of the Korean Noodles.

38. For the purpose of carrying out the Conspiracy, the Nongshim Defendants, the Ottogi Defendants, Samyang Sam Yang and the Yakult Defendants and their Co-conspirators engaged in conduct that included, among other things:

(a) participating in meetings, conversations, email correspondence and other communications to discuss price increases for Korean Noodles;

(b) participating in meetings, conversations, email correspondence and other communications to discuss price quotations for Korean Noodles to be submitted to wholesalers and other vendors in Canada, the United States, South Korea and elsewhere;

(c) participating in meetings, conversations, email correspondence and other communications to discuss the allocation among the companies of certain sales, territories, customers or markets for the production or supply of Korean Noodles;

(d) agreeing, in those meetings, conversations, emails and other communications to fix, maintain, increase or control the price for the supply of Korean Noodles sold to wholesalers and other vendors in Canada, the United States, South Korea and elsewhere;

(e) agreeing, in those meetings, conversations, emails and other communications on price quotations for Korean Noodles to be submitted to wholesalers and other vendors in Canada, the United States, South Korea and elsewhere;

(f) agreeing, in those meetings, conversations, emails and other communications to allocate among the companies certain sales, territories, customers or markets for the production or supply of Korean Noodles sold to wholesalers and other vendors in Canada, the United States, South Korea and elsewhere;

(g) agreeing, in those meetings, conversations, emails and other communications to fix, maintain, control, prevent, lessen or eliminate the production or supply of Korean Noodles sold to wholesalers and other vendors in Canada, the United States, South Korea and elsewhere;

(h) in order to effectuate the Agreement, exchanging information on: 1) price increases for Korean Noodles and the timing of those price increases, 2) sensitive management information, such as sales results, business support strategies, plans for new product releases, sales promotion plans and advertising plans, 3) price quotations to be submitted to wholesalers and other vendors in Canada, the United States, South Korea and elsewhere, 4) the allocation of certain sales, territories, customers or markets for the production or supply of Korean Noodles sold to wholesalers and other vendors in Canada, the United States, South Korea and elsewhere, and/or 5) the production and supply of Korean Noodles sold to wholesalers and other vendors in Canada, the United States, South Korea and elsewhere;

(i) in accordance with the Agreement, fixing, maintaining, increasing and/or controlling the price for the supply of the Korean Noodles sold to wholesalers and other vendors in Canada, the United States, South Korea and elsewhere;

(j) in accordance with the Agreement, submitting price quotations to wholesalers and other vendors in Canada, the United States, South Korea and elsewhere;

(k) in accordance with the Agreement, allocating among the companies certain sales, territories, customers and/or markets for the production or supply of Korean Noodles sold to wholesalers and other vendors in Canada, the United States, South Korea and elsewhere;

- (l) in accordance with the Agreement, fixing, maintaining, controlling, preventing, lessening and/or eliminating the production and/or supply of the Korean Noodles sold to wholesalers and other vendors in Canada, the United States, South Korea and elsewhere;
- (m) selling Korean Noodles to wholesalers and other vendors in Canada, the United States, South Korea and elsewhere at collusive and non-competitive prices;
- (n) accepting payment for Korean Noodles sold to wholesalers and other vendors in Canada, the United States, South Korea and elsewhere at collusive and non-competitive prices which resulted in increased revenues for each of the Defendants;
- (o) engaging in conversations and other communications for the purpose of monitoring and enforcing adherence to the agreed upon price fixing scheme; and
- (p) employing measures to keep their conduct secret.

39. The Defendants agreed upon a strategy to best implement the Conspiracy: Nongshim, as the market leader, would increase the price for its Korean Noodles, and the other Defendants would follow shortly thereafter. The pattern of price increases occurred initially in Korea, followed by price increases in Canada and the United States through, and with the assistance of, the Defendants incorporated in the United States and the Defendants registered in Ontario.

40. During the Class Period, the Defendants increased the price of Korean Noodles at least six times. Each of these price increases was supra-competitive.

41. The acts in furtherance of the Conspiracy were carried out, at least in part, within Canada and were an unreasonable restraint of trade and commerce.

42. The conduct of the Nongshim Defendants, the Ottogi Defendants, Samyang Sam-Yang and the Yakult Defendants and their Co-conspirators was contrary to Part VI of the *Competition Act*, RSC 1985, c C-34.

43. Each of the Defendants aided, abetted and/or counselled the other Defendants and Co-conspirators in the commission of the breaches of Part VI of the *Competition Act*, RSC 1985, c C-34. Each of the Defendants therefore violated sections 21 and 22 of the *Criminal Code*, RSC 1985, c C-46.

44. The conduct of the Defendants and their Co-conspirators was also contrary to the competition laws of the United States and South Korea.

45. Further, for the purpose of giving effect to the Conspiracy and contrary to Part VI of the *Competition Act*, RSC 1985, c C-34, beginning at least as early as December 2000 and continuing until at least July 2012, the exact dates being unknown to the Plaintiff, Nongshim America, Ottogi America, and other Defendants wherever incorporated who carried on business in Canada, implemented, in whole or in part in Canada, a directive, instruction, intimation of

policy or other communication to the corporation or any person from a person in a country other than Canada who was in a position to direct or influence the policies of the corporation, which communication was for the purpose of giving effect to a conspiracy, combination, agreement or arrangement entered into outside Canada, whether or not any director or officer of the corporation in Canada had knowledge of the conspiracy, combination, agreement or arrangement.

46. The conduct of the Defendants and their Co-conspirators increased the price of the Korean Noodles in Canada, including in the province of Ontario, and in the United States, South Korea and elsewhere. The Plaintiff and Class Members were overcharged for the Korean Noodles.

47. As a consequence of the increased price of the Korean Noodles, economic losses and damages were incurred by direct purchasers of the Korean Noodles, including wholesalers and other vendors of the Korean Noodles.

48. Economic losses and damages were also incurred by indirect purchasers of the Korean Noodles, being customers who purchased Korean Noodles from a grocery store or other vendor.

49. The Nongshim Defendants, the Ottogi Defendants, Samyang ~~Sam Yang~~ and the Yakult Defendants intended to cause damage to the Plaintiff and Class Members. Alternatively, the Nongshim Defendants, the Ottogi Defendants, Samyang ~~Sam Yang~~ and the Yakult Defendants knew or ought to have known that their actions would injure the Plaintiff and Class Members.

50. The conduct of the Defendants in furtherance of the Conspiracy was unlawful and inequitable. The increased revenues that the Nongshim Defendants, the Ottogi Defendants, Samyang Sam-Yang and the Yakult Defendants realized as a consequence of artificially inflating the prices of the Korean Noodles are ill-gotten profits.

51. Pursuant to section 36 of the *Competition Act*, RSC 1985, c C-34, the Plaintiff and Class Members are entitled to recover from the Nongshim Defendants, the Ottogi Defendants, Samyang Sam-Yang and the Yakult Defendants an amount equal to the loss or damage suffered by them, together with any additional amount that the Court may allow.

52. The Plaintiff and Class Members are also entitled to damages at common law or, alternatively, to restitutionary damages.

53. The Nongshim Defendants, the Ottogi Defendants, Samyang Sam-Yang and the Yakult Defendants are jointly and severally liable for the actions of all of the Co-conspirators and for the damages allocated to each Defendant.

THE KOREAN FAIR TRADE COMMISSION ORDER

54. On or about July 12, 2012, the Korean Fair Trade Commission (“KFTC”) issued an order (the “KFTC Order”) holding that Nongshim, Ottogi, Samyang Sam-Yang and Yakult (collectively the “Korean Defendants”) had each conspired to fix, maintain, raise and/or stabilize the price for Korean Noodles. The KFTC found that the Korean Defendants had increased the price for their respective Korean Noodles at the same time and to similar levels at least 6 times

between May 2001 and February 2010. Notably, the KFTC found that there was never any obvious disruption or interruption in the Defendants' Conspiracy to increase the price of Korean Noodles; the Defendants' Conspiracy was continuous and repetitive.

55. The KFTC Order enjoined the Korean Defendants from 1) committing anti-competitive acts by collaboratively deciding the price for Korean Noodles, and 2) exchanging pricing information regarding Korean Noodles.

56. The KFTC Order required the Korean Defendants to pay penalties totaling approximately ₩136.3 billion (approximately US\$120 million) as follows:

- (a) Nongshim was ordered to pay approximately ₩108.1 billion in penalties;
- (b) Samyang Sam-Yang was ordered to pay approximately ₩12.1 billion in penalties;
- (c) Ottogi was ordered to pay approximately ₩9.8 billion in penalties; and
- (d) Yakult was ordered to pay approximately ₩6.3 billion in penalties.

57. Samyang Sam-Yang announced on July 17, 2012, that it was excused by the KFTC from paying the ₩12.1 billion penalty because it had voluntarily reported the price fixing conspiracy to the KFTC to avail itself of the KFTC's Leniency Program.

CAUSES OF ACTION

Breaches of Part VI of the *Competition Act*

58. The conduct of the Nongshim Defendants, the Ottogi Defendants, Samyang Sam-Yang and the Yakult Defendants was contrary to Part VI of the *Competition Act*, RSC 1985, c C-34.

59. Pursuant to section 36 of the *Competition Act*, RSC 1985, c C-34, the Plaintiff and Class Members are entitled to recover from the Defendants an amount equal to the loss or damage suffered by them, together with any additional amount that the Court may allow.

Civil Conspiracy

60. Civil conspiracy requires 1) an agreement between two or more persons, 2) concerted action taken pursuant to the agreement, and 3) actual damage suffered by the plaintiff. If the defendant's action is lawful, there must be evidence that the conspirators intended to cause damage to the plaintiff. If the defendant's action is unlawful, there must at least be evidence that the conspirators knew or ought to have known that their action would injure the plaintiff.

61. In this case, each of the Nongshim Defendants, the Ottogi Defendants, Samyang Sam Yang and the Yakult Defendants entered into a continuing agreement with the other Defendants, who were their competitors with respect to the Korean Noodles, to 1) increase or maintain the prices of Korean Noodles, and/or 2) suppress and eliminate competition with respect to the manufacture, marketing, sale and/or distribution of Korean Noodles, and to conceal their Agreement from wholesalers, vendors, end-users and other stakeholders.

62. Pursuant to the Agreement, the Nongshim Defendants, the Ottogi Defendants, Samyang Sam Yang and the Yakult Defendants: 1) fixed, maintained, increased or controlled the price for the supply of Korean Noodles sold to wholesalers and other vendors in Canada, the United States, South Korea and elsewhere, 2) allocated sales, territories, customers or markets for the production or supply of Korean Noodles sold to wholesalers and other vendors in Canada, the

United States, South Korea and elsewhere, and/or 3) fixed, maintained, controlled, prevented, lessened or eliminated the production or supply of Korean Noodles sold to wholesalers and other vendors in Canada, the United States, South Korea and elsewhere.

63. The Nongshim Defendants, the Ottogi Defendants, Samyang Sam-Yang and the Yakult Defendants intended to cause damage to the Plaintiff and Class Members. Alternatively, the conduct of the Nongshim Defendants, the Ottogi Defendants, Samyang Sam-Yang and the Yakult Defendants was unlawful, and the Defendants knew or ought to have known that their actions would injure the Plaintiff and Class Members.

64. The Plaintiff and Class Members suffered loss and damage as a consequence of the Agreement and the concerted action of the Nongshim Defendants, the Ottogi Defendants, Samyang Sam-Yang and the Yakult Defendants taken pursuant to the Agreement.

65. The Plaintiff and Class Members should be compensated for their losses.

Unlawful Interference with Economic Interests

66. The three essential elements of the tort of unlawful interference with economic interests are 1) the defendant intended to injure the plaintiff's economic interests, 2) the interference was by illegal or unlawful means, and 3) the plaintiff suffered economic loss or harm as a result.

67. With respect to the first element of the test, the defendant must intend to cause loss to the plaintiff either as an end goal or as the means of achieving another end goal such as self-

enrichment. In this case, the Nongshim Defendants, the Ottogi Defendants, Samyang Sam-Yang and the Yakult Defendants intended to cause loss to the Plaintiff and Class Members as a means of achieving their goal of self-enrichment.

68. The “unlawful means” required for the second branch of the test includes the Defendants’ torts, breaches of the *Competition Act*, RSC 1985, c C-34, breaches of the *Criminal Code*, RSC 1985, c C-46, and breaches of competition laws in the United States and South Korea.

69. The overcharge for the Korean Noodles by the Nongshim Defendants, the Ottogi Defendants, Samyang Sam-Yang and the Yakult Defendants satisfies the third element of the test, being economic loss to the Plaintiff and Class Members.

70. The Plaintiff and Class Members should be compensated for their losses.

Unjust Enrichment

71. As a result of the unlawful conduct of the Nongshim Defendants, the Ottogi Defendants, Samyang Sam-Yang and the Yakult Defendants and their Co-conspirators, the Defendants benefited from the increased prices of Korean Noodles which resulted in increased revenue for the Defendants or some of them.

72. The Plaintiff and Class Members suffered a corresponding deprivation as a consequence of the inflated prices of the Korean Noodles.

73. There was no juristic reason or justification for the enrichment of the Defendants; conversely, the conduct of the Nongshim Defendants, the Ottogi Defendants, Samyang Sam Yang and the Yakult Defendants was unlawful.

74. Restitution should be paid to the Plaintiff and Class Members.

Waiver of Tort

75. The conduct of the Nongshim Defendants, the Ottogi Defendants, Samyang Sam Yang and the Yakult Defendants in furtherance of the Conspiracy was unlawful and inequitable. The increased revenues that the Defendants realized as a consequence of artificially inflating the prices of the Korean Noodles are ill-gotten profits.

76. The Defendants should be compelled to disgorge the profits of their wrongdoing.

77. Restitution should be paid to the Plaintiff and Class Members.

CAUSATION AND DAMAGES

78. As a consequence of the Conspiracy, the Plaintiff and Class Members suffered economic loss and damage. These losses were the direct result of the unlawful conduct of the Nongshim Defendants, the Ottogi Defendants, Samyang Sam Yang and the Yakult Defendants which had the effect of eliminating competition with respect to the Korean Noodles. This lack of competition caused the Plaintiff and Class Members to pay artificially inflated prices for the Korean Noodles.

79. Such loss and damage was foreseeable by the Defendants, who intended to injure the economic interests of the Plaintiff and Class Members.

PUNITIVE DAMAGES

80. A punitive damage award in this case is necessary to express society's condemnation of the conduct engaged in by the Defendants and to achieve the goals of both specific and general deterrence.

81. The Nongshim Defendants, the Ottogi Defendants, Samyang Sam-Yang and the Yakult Defendants intentionally engaged in unlawful conduct for their personal financial gain. The conduct of the Defendants was planned and deliberate. It lasted for several years. The Defendants profited from their misconduct. Their conduct was high-handed and represented a marked departure from ordinary standards of decent behaviour.

82. Compensatory damages are insufficient in this case. The conduct of the Nongshim Defendants, the Ottogi Defendants, Samyang Sam-Yang and the Yakult Defendants merits punishment and warrants a claim for punitive damages.

DISCOVERABILITY

83. The Plaintiff did not discover the existence of the claims which are the basis of this action until recently. The nature of the Defendants' conspiracy was self-concealing, and the Defendants took active, deliberate and wrongful steps to conceal their participation in the alleged conspiracy. Because of the Defendants' conspiracy, the Plaintiff and Class Members were unaware of the

Defendants' unlawful conduct, and did not know that the prices they were paying for Korean Noodles had been unlawfully fixed, maintained, increased, controlled and unreasonably enhanced.

SERVICE OUTSIDE OF ONTARIO

84. The originating process may be served without court order outside Ontario because the claim is:

- (a) in respect of a tort committed in Ontario (Rule 17.02(g)); and
- (b) against a person carrying on business in Ontario (Rule 17.02(p)).

June 19, 2017

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Jooih Park
Plaintiff

- and -

Nong Shim Co., Ltd. et al

Defendants

**ONTARIO
SUPERIOR COURT OF JUSTICE
PROCEEDINGS COMMENCED AT
TORONTO**

*Proceeding under the Class Proceedings
Act, 1992*

ORDER

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