

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

Breeanne Buckley Peni, Individually and on Behalf
of All Others Similarly Situated,

Plaintiff,

v.

DAILY HARVEST, INC. and SECOND BITE
FOODS, INC. d/b/a “STONE GATE FOODS”,

Defendants.

Civil Action No.
22-cv-05443
Honorable Denise L. Cote

**PLAINTIFF’S UNOPPOSED MOTION TO PRELIMINARILY APPROVE CLASS
ACTION SETTLEMENT, APPOINT CLASS COUNSEL, APPROVE PROPOSED
CLASS NOTICE, AND SCHEDULE A FINAL APPROVAL HEARING**

PLEASE TAKE NOTICE THAT, upon the Joint Declaration of William D. Marler, James R. Peluso, and Jeffrey A. Bowersox, sworn to on May 2, 2024, and the accompanying exhibits and memorandum of law, and upon all prior proceedings, pleadings, and filings in the above-captioned action, Plaintiff Breeanne Buckley Peni will move this Court at the United States District Court for the Southern District of New York, Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, New York, New York 10007, before the Honorable Denise L. Cote, United States District Judge, for an Order under Federal Rule of Civil Procedure 23 to:

1. Grant preliminary approval of the proposed Class Action Settlement in the amount of Twenty-Two Million, Nine Hundred and Ninety-Nine Thousand Dollars (\$22,999,000.00) with the Settling Defendants Daily Harvest, Inc., and Second Bite Foods, Inc., on behalf of the Settlement Class Members according to the terms of the parties’ Settlement Agreement;

2. Have the proposed Amended Class Action Complaint serve as the operative complaint for the settlement of all litigation and claims against the Settling Defendants;
3. Certify, for settlement purposes only, the Rule 23(b)(3) Class which is defined as “All persons in the United States (including its territories) who purchased, received, or consumed French Lentil + Leek Crumbles (“the Product” or “the Crumbles”) and directly suffered personal injuries allegedly caused by the consumption of the Crumbles, and all persons in the United States (including its territories) who suffered consequential monetary damages arising from or related to another person’s alleged personal injuries arising from consumption of the Crumbles.”
4. Approve the form, substance, and distribution of the proposed Form of class notices (“the Class Notice”);
5. Approve the proposed Claim Form and Allocation Matrix;
6. Preliminarily approve the manner of distribution of the Settlement Fund;
7. Appoint Edgar Gentle of Gentle Turner & Benson, LLC as the Settlement Administrator for purposes of administering the Notice and Settlement Program;
8. Appoint Plaintiff Breeanne Buckley Peni as class representative;
9. Appoint Plaintiff’s Counsel as attorneys for the class (“Class Counsel”);
10. Set deadlines and procedures for persons who fall within the class definition to exclude themselves or object to the proposed Settlement;
11. Set a date for the Final Approval Hearing to determine whether the proposed Settlement should be granted final approval; and
12. Stay all proceedings in this action with respect to the Settling Parties, other than those necessary to administer and evaluate the proposed Settlement.

A proposed Order to grant preliminary approval of the Settlement is attached to the accompanying Joint Declaration of William D. Marler, James R. Peluso, and Jeffrey A. Bowersox in support of the motion.

Oral argument is requested to the extent desired by the Court.

Dated: May 2, 2024

Respectfully submitted,

/s/ William D. Marler

MARLER CLARK, INC. P.S.
1012 First Avenue, Fifth Floor
Seattle, WA 98104
Telephone: (206) 346-1888
bmarler@marlerclark.com

Paul V. Nunes (Bar Roll # PN2853)
HEISMAN NUNES & HULL LLP
1603 Empire Blvd., Suite 3B
Webster, NY 14580-2182
Telephone: (585) 270-6922
pnunes@nhhatorneys.com

James R. Peluso (Bar Roll # JP2875)
DREYER BOYAJIAN LLP
75 Columbia Street
Albany, New York 12210
Telephone: (518) 463-7784
jpeluso@dblawnny.com

Joseph E. O'Connor (Bar Roll # JO5185)
O'CONNOR & PARTNERS, PLLC
255 Wall Street, Kingston, NY 12401
Telephone: (845) 303-8777
joconnor@onplaw.com

Jeffrey A. Bowersox
BOWERSOX LAW FIRM, P.C.
385 1st Street, Suite 215
Lake Oswego, OR 97034
Telephone: (503) 452-5858
jeffrey@bowersoxlaw.com

Counsel for the Plaintiff and the Proposed Class