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17 *Attorneys for Plaintiff*

18 UNITED STATES DISTRICT COURT  
19 CENTRAL DISTRICT OF CALIFORNIA

20 BOKHYUN YOO, on behalf of  
21 herself and all others similarly  
22 situated,

23 Plaintiff,

24 v.

25 WENDY'S INTERNATIONAL, INC.,

26 Defendants.

27 CASE NO. CV07-4515 FMC (JCx)

28 **CLASS ACTION SETTLEMENT  
AGREEMENT**

1 THIS CLASS ACTION SETTLEMENT AGREEMENT, is made and entered  
2 into as of the 17th day of December 2008, by and among Wendy's International, Inc.  
3 Corporation, an Ohio Corporation, located in Dublin, Ohio ("Wendy's") and Bokhyun  
4 Yoo ("Yoo", the "Plaintiff", or the "Class Representative"), Catherine Fitch, Adam  
5 Jernow, and Leah McLawrence on behalf of themselves and all others similarly situated.

6 1. RECITALS

7 1.1 On or about July 12, 2007, Bokhyun Yoo filed an action in the  
8 United States District Court for the Central District of California, captioned *Yoo v.*  
9 *Wendy's International, Inc.*, No. 2:07-cv-04515-FMC-JC. On or about October 12,  
10 2007, Yoo filed a First Amended Class Action Complaint (the "Amended Complaint").

11 1.2 The Amended Complaint asserts that Wendy's misrepresented the  
12 trans fat content of its French fries and fried chicken products sold under the Wendy's  
13 label at Wendy's restaurants from June 8, 2006 to the present. The Amended Complaint  
14 asserts causes of action for violation of the California Unfair Competition Statute,  
15 California Business and Professional Code § 17200, *et seq.*, violation of the California  
16 Consumer Legal Remedies Act, California Civil Code § 1750, *et seq.*, fraud, breach of  
17 contract, unjust enrichment, and strict product liability.

18 1.3 Wendy's denies any and all liability with respect to any and all facts  
19 and claims alleged in this action or any of the actions that make up the Trans Fat  
20 Litigation (as defined in paragraph 2.9).

21 1.4 On December 5, 2007, this Court granted Defendant's motion to  
22 dismiss with prejudice Plaintiff's claims for breach of contract, unjust enrichment, and  
23 strict product liability and denied Defendant's motion to dismiss Plaintiff's claims for  
24 common law fraud and related consumer protection statutes.

25 1.5 On May 27, 2008, Yoo filed a motion to certify this matter as a class  
26 action pursuant to Rule 23(b)(3) of the Federal Rules of Civil Procedure.

27 1.6 This matter has not been certified as a class action. Subject to the  
28 approval of the Court, the parties agree that a class may be conditionally certified for

1 purposes of this settlement.

2           1.7 Class Counsel (as defined in paragraph 2.1) are familiar with the  
3 claims being settled and the defenses asserted. Class Counsel have had the opportunity  
4 to conduct, and have conducted, discovery relating to the claims alleged in the Amended  
5 Complaint, including propounding interrogatories and requests for admissions,  
6 inspecting and reviewing documents produced by Wendy's, and conducting depositions  
7 of witnesses.

8           1.8 Wendy's Counsel (as defined in paragraph 2.11) are familiar with  
9 the claims being settled and the defenses asserted. Wendy's Counsel have had the  
10 opportunity to conduct, and have conducted, discovery relating to the claims alleged in  
11 the Amended Complaint, including propounding interrogatories, inspecting and  
12 reviewing documents produced by Plaintiff and other named plaintiffs in the Trans Fat  
13 Litigation (as defined in paragraph 2.9), and conducting depositions of other named  
14 plaintiffs in the Trans Fat Litigation (as defined in paragraph 2.9).

15           1.9 Yoo and Class Counsel believe that the Amended Complaint has  
16 merit. Wendy's and Wendy's Counsel believe that the claims asserted are without merit  
17 and that Wendy's has complete, valid defenses thereto. The terms of this Settlement  
18 Agreement were reached after extensive, bona fide arm's length negotiations among  
19 counsel for the parties, including mediation before the Honorable Theodore H. Katz,  
20 Magistrate Judge in the United States District Court for the Southern District of New  
21 York.

22           1.10 The parties and their counsel acknowledge the uncertain outcome  
23 and the risk of further litigation, as well as the difficulties, delays, and costs inherent in  
24 such litigation. Plaintiff and Class Counsel have also taken into account the substantial  
25 benefits conferred on Yoo and the Settlement Class (as defined in paragraph 2.8) by the  
26 settlement set forth in this Settlement Agreement, and have determined that the  
27 settlement set forth in this Settlement Agreement is fair, reasonable, and in the best  
28 interests of Yoo and the Settlement Class. This settlement shall not be construed or

1 deemed to be a concession by Plaintiff of any infirmity in the claims asserted in the  
2 Amended Complaint.

3 1.11 Wendy's wants to avoid the substantial burden, expense,  
4 inconvenience, distraction, and interference with its ongoing business operations of  
5 continuing to litigate the Trans Fat Litigation (as defined in paragraph 2.9) through trial  
6 and appeals. Therefore, Wendy's has determined that settlement on the terms set forth  
7 herein is in its best interests.

8 NOW, THEREFORE, in consideration of the mutual covenants and other  
9 consideration described below, and subject to approval of the Court, the parties, by and  
10 through their respective undersigned counsel, agree as follows:

11 2. DEFINITIONS

12 2.1 "Class Counsel" means Michael R. Reese, Reese Richman LLP, 875  
13 6<sup>th</sup> Avenue, 18<sup>th</sup> Floor, New York, New York 10001.

14 2.2 "Class Notice" means the legal notice of the proposed settlement  
15 terms, as approved by Wendy's Counsel, Class Counsel, and the Court, to be provided  
16 to potential members of the Settlement Class pursuant to paragraph 8 below. The Class  
17 Notice shall be substantially in the form attached hereto as Exhibit B.

18 2.3 "Class Representative" means Bokhyun Yoo, a resident of California  
19 and, as applicable, her agents, servants, assignees, heirs, successors, and/or other  
20 transferees or representatives.

21 2.4 "Court" means the United States District Court for the Central  
22 District of California.

23 2.5 "Effective Date" means the date upon which the time to appeal or  
24 otherwise seek review of each of the events described in paragraph 2.6 has expired or,  
25 appeals having been taken, the date upon which said appeals have been finally resolved  
26 without the possibility of further appeal.

27 2.6 "Final Approval" of this Settlement Agreement means the last date  
28 by which all of the following have occurred:

1 (a) Judgment is entered in the Yoo Action approving this Settlement  
2 Agreement; and

3 (b) The Jernow Action and the Fitch Action, as defined in paragraph 2.9  
4 below, is each dismissed with prejudice.

5 2.7 "Preliminary Approval" means the order preliminarily approving the  
6 Settlement Agreement, preliminarily certifying the Settlement Class, and approving the  
7 Notice of Proposed Settlement, substantially in the form attached hereto as Exhibit A.

8 2.8 "Settlement Class" shall mean the class of persons certified by the  
9 Court for settlement purposes only and consisting of all persons in the United States  
10 who, between June 8, 2006 and the date this Settlement Agreement is filed with the  
11 Court, purchased Wendy's Fried Food (as defined in paragraph 2.12) from a Wendy's  
12 restaurant. Excluded from the Settlement Class are persons who have timely and  
13 validly opted out of the Settlement Class pursuant to paragraph 6.

14 2.9 "Trans Fat Litigation" means and includes the following individual  
15 cases, each of which was filed as a proposed class action:

16 (a) *Bokhyun Yoo, on behalf of herself and all others similarly situated v.*  
17 *Wendy's International, Inc.*, Civil Action No. 07-cv-4515 FMC filed on or about July  
18 12, 2007 in the United States District Court for the Central District of California (the  
19 "Yoo Action").

20 (b) *Adam Jernow and Leah McLawrence, on behalf of themselves and*  
21 *all others similarly situated v. Wendy's International Inc.*, Civil Action No. 07-cv-3971  
22 (LTS) filed on or about May 21, 2007 in the United States District Court for the  
23 Southern District of New York (the "Jernow Action").

24 (c) *Catherine Fitch, on behalf of herself and all others similarly situated*  
25 *v. Wendy's International Inc.*, Civil Action No. 8:07-cv-02148-JDW, filed on or about  
26 November 19, 2007 in the United States District Court for the Middle District of Florida  
27 (the "Fitch Action").

28 2.10 "Wendy's" means Wendy's International Inc., an Ohio corporation

1 with its principal place of business in Dublin, Ohio, its franchisees, predecessors,  
2 subsidiaries, affiliates, officers, directors, partners, employees, agents, servants,  
3 assignees, licensees (unless such licensee is a member of the Settlement Class as  
4 defined in paragraph 2.8), successors, and/or other transferees or representatives.

5           2.11 “Wendy’s Counsel” means Thomas P. McLish and Troy D. Cahill,  
6 Akin Gump Strauss Hauer & Feld LLP, 1333 New Hampshire Avenue, N.W.,  
7 Washington, D.C. 20036; and Mark S. Inzetta, Vice President and Assistant General  
8 Counsel, Wendy’s International, Inc., 4288 West Dublin-Granville Road, Dublin, Ohio  
9 43017.

10           2.12 “Wendy’s Fried Food” means French fries and fried chicken  
11 products sold under the Wendy’s label at Wendy’s restaurants from June 8, 2006 to the  
12 date this Settlement Agreement is filed with the Court.

13           3.     SETTLEMENT BENEFITS

14           3.1     Wendy’s agrees that in consideration of the Releases set forth in  
15 paragraph 5, Wendy’s will provide the benefits described in this paragraph 3.

16           3.2     Elimination of Trans-Fat From Wendy’s Frying Process

17           (a)     To the extent that any Wendy’s Fried Food item is prepared, whether  
18 at the par fry stage or finish fry stage, in cooking oil containing trans fat, the cooking oil  
19 must contain a level of trans fat per serving that, pursuant to the regulations then in  
20 force and promulgated by the United States Food and Drug Administration, may be  
21 represented as 0 grams of trans fat.

22           (b)     Wendy’s agrees that the cost to it and its suppliers to eliminate trans  
23 fat from the frying process, including, but not limited to, the use of non-hydrogenated  
24 fry oils for Wendy’s Fried Food amounts to no less than two million, two hundred  
25 thousand dollars (\$2,200,000). Wendy’s also agrees that this amount shall be attributed  
26 as value to the Settlement Class as part of the terms of this settlement.

27           (c)     Wendy’s is not required to eliminate from Wendy’s Fried Food trans  
28 fats that are not attributable to cooking oil. The Parties are unaware of any artificial

1 trans fats in Wendy's Fried Food that are not attributable to the par fry and fry oils used  
2 to cook Wendy's Fried Food that raise the level of trans fat per serving in Wendy's Fried  
3 Food above an amount that, pursuant to the regulations then in force and promulgated  
4 by the United States Food and Drug Administration, may be represented as 0 grams of  
5 trans-fat.

6 **3.3 Independent Monitoring to Assure Compliance With Paragraph**

7 **3.2(a)**

8 (a) Wendy's Fried Food shall be subjected to independent monitoring  
9 for one year from the date of final approval of the settlement to assure that Wendy's  
10 Fried Food is in compliance with paragraph 3.2(a), consisting solely of quarterly tests of  
11 seven Wendy's restaurants picked at random by the independent monitor. The  
12 independent monitor shall be Covance, Inc. ("Covance"), or, if Covance is not willing to  
13 engage as the independent monitor, a laboratory mutually agreeable to both Wendy's  
14 Counsel and Class Counsel. Both Wendy's Counsel and Class Counsel shall receive  
15 copies of the laboratory reports from the independent monitor. Wendy's shall bear all  
16 expense for this independent monitoring.

17 (b) To the extent that any samples tested pursuant to the independent  
18 monitoring indicate the presence of trans fats at levels sufficient to generate reasonable  
19 belief of non-compliance with the requirements of paragraph 3.2(a), or if Class Counsel  
20 otherwise form a reasonable belief of non-compliance with the requirements of  
21 paragraph 3.2(a), Class Counsel shall promptly notify Wendy's counsel of such belief  
22 and the grounds therefore; Wendy's shall thereupon have 60 days to assess the  
23 circumstances and respond, including by conducting a re-sampling that shall be  
24 conducted by Covance, or a mutually agreed upon equivalent, following the same  
25 protocol as stated above in 3.3(a), *i.e.*, from seven restaurants chosen at random by the  
26 independent monitor. If a re-sampling is consistent with compliance with paragraph  
27 3.2(a), Wendy's is not required to take any further action.

28

1           3.4    **Charitable Donation**

2           (a)    Wendy's shall make a donation of one million, eight hundred  
3 thousand dollars (\$1,800,000.00) to be paid equally to the American Cancer Society, the  
4 American Diabetes Association, the American Dietetic Association, and the American  
5 Heart Association. Wendy's shall place this amount of one million, eight hundred  
6 thousand dollars (\$1,800,000.00) in an interest bearing escrow account within 30 days  
7 of Preliminary Approval and shall pay that amount, plus any interested accrued, to the  
8 American Cancer Society, the American Diabetes Association, the American Dietetic  
9 Association, and the American Heart Association within 20 days of the Effective Date  
10 of the Settlement Agreement.

11           4.    **SETTLEMENT CLASS**

12           4.1    For the purposes of settlement and the proceedings contemplated  
13 herein, the Parties stipulate and agree that a nationwide Settlement Class should be  
14 certified. Class certification shall be for settlement purposes only and shall have no  
15 effect for any other purpose.

16           4.2    As part of the settlement process, the Parties shall apply to the Court  
17 for entry of an order, substantially in the form of Exhibit A to this Settlement  
18 Agreement which, among other things, preliminarily certifies the Settlement Class in  
19 accordance with the definition set forth in Paragraph 2.8 of this Settlement Agreement.

20           4.3    The certification of the Settlement Class shall be binding only with  
21 respect to this Settlement Agreement. In the event that Final Approval does not occur  
22 for any reason, the Preliminary Approval, and all of its provisions, shall be vacated by  
23 its own terms, and the Trans Fat Litigation shall revert to its status with respect to the  
24 complaints and class certification as existed prior to the date of this Settlement  
25 Agreement.

26           5.    **RELEASES**

27           5.1    Each Settlement Class member shall grant Wendy's a General  
28 Release of all claims arising from the purchase of Wendy's Fried Food that are or could



1 have been asserted in the Trans Fat Litigation relating to the claims asserted therein.  
2 The claims asserted in the Trans Fat Litigation do not relate to and the release does not  
3 include claims, if any, for personal injury. Plaintiff and Class Counsel each represent  
4 that they are not aware of any valid claim for personal injury arising out of the facts  
5 alleged in the Complaints and that they do not presently intend to bring or assert any  
6 such claim for personal injury.

7           5.2 Upon the Effective Date of this Settlement Agreement, Plaintiff and  
8 each member of the Settlement Class, and each of their successors, assigns, legatees,  
9 heirs, and personal representatives, hereby release and forever discharge Wendy's and  
10 its affiliated entities, franchisees, predecessors, successors, and assigns, and any of their  
11 present and former directors, officers, employees, shareholders, agents, partners,  
12 privities, representatives, attorneys, accountants, and all persons acting by, through,  
13 under, or in concert with them, or any of them, from any and all manner of action,  
14 causes of action, claims, demands, rights, suits, obligations, debts, contracts,  
15 agreements, promises, liabilities, damages, charges, losses, costs, expenses, and  
16 attorneys' fees, of any nature whatsoever, known or unknown, in law or equity, fixed or  
17 contingent, to the extent that they arise out of or relate to any acts, omissions, or other  
18 conduct that is alleged in the Trans Fat litigation, including but not limited to the  
19 allegations that Wendy's misrepresented the trans fat level of Wendy's Fried Food.

20           In addition, with respect to the subject matter of the Trans Fat Litigation, by  
21 operation of entry of the Final Order and Judgment, Plaintiff and each member of the  
22 Settlement Class, and each of their respective successors, assigns, legatees, heirs, and  
23 personal representatives, expressly waive any and all rights or benefits they may now  
24 have, or in the future may have, under any law relating to the releases of unknown  
25 claims, including, without limitation, Section 1542 of the California Civil Code, which  
26 provides:

27           A GENERAL RELEASE DOES NOT EXTEND TO  
28           CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR

1 SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE  
2 TIME OF EXECUTING THE RELEASE, WHICH IF  
3 KNOWN BY HIM OR HER MUST HAVE MATERIALLY  
4 AFFECTED HIS OR HER SETTLEMENT WITH THE  
5 DEBTOR.

6 In addition to the foregoing, by operation of entry of the Final Order and  
7 Judgment, Plaintiff and each member of the Settlement Class shall be deemed to have  
8 waived any and all provisions, rights, and benefits conferred by any law of any state or  
9 territory of the United States or any foreign country, or any principle of common law  
10 that is similar, comparable, or equivalent in substance or intent to Section 1542 of the  
11 California Civil Code.

12 Plaintiff fully understands that the facts upon which this Settlement Agreement is  
13 executed may hereafter be other than or different from the facts now believed by  
14 Plaintiff and Class Counsel to be true and nevertheless agrees that this Settlement  
15 Agreement shall remain effective notwithstanding any such difference in facts.

16 5.3 Class Counsel will take all steps necessary to cause the Jernow  
17 Action and the Fitch Action to be dismissed with prejudice concurrent with the Final  
18 Approval of this Settlement Agreement.

19 6. OPTING OUT OF THE SETTLEMENT CLASS

20 6.1 Each Settlement Class member may, at his, her or its option, elect to  
21 opt-out of the settlement described herein. Counsel for the parties shall recommend to  
22 the Court that each such Settlement Class member must submit to the Court his/her  
23 request to opt out of the Settlement Class not later than twenty-one (21) calendar days  
24 prior to the hearing scheduled by the Court to consider approval of the settlement (the  
25 "Settlement Hearing").

26 6.2 Potential Settlement Class members shall have the right to be  
27 excluded from, or "opt out" of, the Settlement Class and this Settlement Agreement by  
28 sending a written request for exclusion by first-class mail to Class Counsel and Wendy's

1 Counsel. The written request for exclusion must be postmarked not later than twenty-  
2 one (21) calendar days prior to the Settlement Hearing and must set forth: (a) an  
3 identification of the action, *e.g.*, Wendy's Trans Fat Class Action Litigation; (b) the  
4 potential Settlement Class member's full name, address, date of purchase, location of  
5 purchase, and items purchased; and (c) a statement that she or he wishes to be excluded  
6 from the Settlement Class.

7           6.3 Any potential Settlement Class member who does not opt out may  
8 object to the proposed settlement or fee request by filing with the Court and mailing to  
9 Class Counsel and to Wendy's Counsel, by first-class mail postmarked not later than  
10 twenty-one (21) calendar days prior to the Settlement Hearing. The objection must set  
11 forth, in clear and concise terms, the legal and factual arguments supporting the  
12 objection.

13           7. Attorneys' Fees and Expenses

14           7.1 Class Counsel represent that the amount of "lodestar" (reasonable  
15 hours expended multiplied by a reasonable hourly rate) expended by counsel on behalf  
16 of plaintiffs in the Trans Fat Litigation is no less than \$900,000.

17           7.2 Based on the representation in paragraph 7.1, Wendy's agrees not to  
18 oppose an award of up to one million, ninety thousand dollars (\$1,090,000) to Class  
19 Counsel of attorneys' fees and reimbursement of expenses subject to approval of the  
20 court in the Yoo Action. Wendy's shall place this amount of one million, ninety  
21 thousand dollars (\$1,090,000), or such lesser amount that the court may affirmatively  
22 direct, in an interest bearing escrow account within 30 days of Preliminary Approval  
23 and shall pay that amount, plus any interested accrued, to Class Counsel within 20 days  
24 of the Effective Date of this Settlement Agreement. Such payment shall be in full  
25 settlement of any claim for any attorneys' fees and expenses by the Class, Class  
26 Representatives, Class Counsel, or any other plaintiff's counsel (including, without  
27 limitation, Dreier LLP and Lee A. Weiss), in the Yoo Action, the Jernow Action and  
28 the Fitch Action. The Parties also agree that the final order on attorney's fees submitted

1 to the Court for its approval shall state that the maximum amount for which Wendy's  
2 will be liable to all Trans Fat Litigation plaintiffs' counsel combined is the amount  
3 approved of by the Court, not to exceed one million, ninety thousand dollars.

4           7.3 Class Counsel agrees that any award of attorneys' fees and expenses  
5 will be sought solely and exclusively in the Yoo Action, with the understanding that  
6 Class Counsel shall be allowed to seek reimbursement in the Yoo Action for fees and  
7 expenses in the Fitch Action and Jernow Action. Class Counsel agrees that they will  
8 not seek or accept more than one million, ninety thousand dollars (\$1,090,000) in  
9 attorneys' fees and expenses.

10           7.4 Wendy's will not appeal from any order with respect to the award of  
11 attorneys' fees and expenses provided that the order does not award attorneys' fees and  
12 expenses in excess of the amount stated in paragraph 7.2. Wendy's shall have the right  
13 to appeal in the event of an award of attorneys' fees and expenses in excess of such  
14 amount. Wendy's shall also have the right to withdraw from the settlement in the event  
15 of an award of fees and expenses in excess of such amount.

16           7.5 Subject to Court approval, Wendy's will agree not to oppose a single  
17 payment of ten thousand dollars (\$10,000) to the named plaintiffs in the Trans Fat  
18 Litigation as compensation for their time, costs and expenses incurred in representing  
19 the class. This payment is separate and apart from the amount of attorney's fees capped  
20 at \$1,090,000 discussed above in sections 7.2-7.4 and, if approved by the Court, will be  
21 made by Wendy's to Class Counsel within 20 days of the Effective Date of this  
22 Settlement Agreement.

23           8. NOTICE TO CLASS OF PROPOSED SETTLEMENT

24           8.1 At its expense, Wendy's shall cause to be published twice in the  
25 daily edition of USA Today within thirty (30) days (or the next available edition date  
26 thereafter) of Preliminary Approval, a notice in the form, size, and style of Exhibit B  
27 hereto.

28           8.2 Wendy's shall also publish the Class Notice on the Internet and

1 make the text of the Class Notice available for downloading via the Internet. Both  
2 Wendy's and Class Counsel will maintain Internet websites from which the Class  
3 Notice may be obtained. Nothing in this paragraph shall in any way abridge Class  
4 Counsel's right or ability to communicate with individual members of the Settlement  
5 Class regarding any aspect of the settlement. To the extent, however, that Class  
6 Counsel wishes to issue any general communication (*i.e.*, not directed to a specific  
7 individual but more in the nature of a public statement) about the settlement, any such  
8 public statement shall be in a form mutually agreed upon by Class Counsel and  
9 Wendy's Counsel.

10 9. NO ADMISSION OF LIABILITY

11 9.1 Wendy's denied, and continues to deny, that it committed or has  
12 threatened to commit any violations of law, breaches of contract or duty, or wrongful  
13 conduct with respect to the Plaintiffs or the Settlement Class, including, but not limited  
14 to the allegations that Wendy's engaged in unfair, unlawful, fraudulent, or deceptive  
15 sales practices, committed fraud, breached an implied contract, or was unjustly  
16 enriched. Wendy's is entering into this Settlement Agreement solely because it will  
17 eliminate the uncertainty, distraction, burden and expense of further litigation. The  
18 provisions contained in this Settlement Agreement shall not be deemed a presumption,  
19 concession or admission by Wendy's of any fault, liability or wrongdoing as to any facts  
20 or claims that have been or might be alleged or asserted in the Trans Fat Litigation, or  
21 any other actions or proceeding that has been, will be, or could be brought, and shall not  
22 be interpreted, construed, deemed, invoked, offered, or received in evidence or  
23 otherwise used by any person in the Trans Fat Litigation, or in any other actions or  
24 proceeding, whether civil, criminal or administrative, for any purpose other than as  
25 provided expressly herein.

26 9.2 In the event that this Settlement Agreement is not approved by the  
27 Court substantially in the form submitted (or in a modified form mutually acceptable to  
28 the parties), or this Settlement Agreement is terminated or fails to become effective or

1 final in accordance with its terms, the Plaintiffs and Wendy's shall be restored to their  
2 respective positions in the Trans Fat Litigation as of the date hereof. In such event, the  
3 terms and provisions of this Settlement Agreement shall have no further force and effect  
4 and shall not be used in the Trans Fat Litigation or in any other proceeding or for any  
5 purpose, and the parties will jointly make an application requesting that any Judgment  
6 entered by the Court in accordance with the terms of this Settlement Agreement shall be  
7 treated as vacated, nunc pro tunc.

8           9.3 By entering into this Settlement Agreement, Wendy's is not  
9 consenting or agreeing to certification of the Settlement Class for any purpose other  
10 than to effectuate the settlement of the Trans Fat Litigation. The parties agree that if this  
11 Settlement Agreement is not approved by the Court substantially in the form submitted  
12 (or in a modified form mutually acceptable to the parties), including, without limitation,  
13 if the Court grants a fee application that would cause the total award for attorneys' fees  
14 and costs to exceed one million, ninety thousand dollars (\$1,090,000), or if this  
15 Settlement Agreement is terminated or fails to become effective or final in accordance  
16 with its terms, the Trans Fat Litigation shall proceed as if no party had ever agreed to  
17 such settlement, without prejudice to the right of any party to take any and all action of  
18 any kind in the Trans Fat Litigation.

19           10. PUBLICITY

20           10.1 Following the filing of the Settlement Agreement with the Court, the  
21 parties may issue a joint press release in a form and at a time to be mutually determined  
22 by Wendy's and Class Counsel.

23           10.2 Wendy's may also make such disclosures regarding the terms of this  
24 settlement as it deems necessary in its filings with the Securities and Exchange  
25 Commission, to its auditors, or as otherwise required by state or federal law.

26           10.3 Other than as permitted in paragraphs 10.1 and 10.2, neither the  
27 Parties nor their counsel will make any public statements regarding the settlement of the  
28 Trans Fat Litigation unless mutually agreed to by Wendy's and Class Counsel.

1           11.    MISCELLANEOUS TERMS

2           11.1   The parties agree that the amount paid and the other terms of the  
3 Settlement Agreement were negotiated at arm's-length and in good faith by the parties  
4 and reflect a settlement that was reached voluntarily after consultation with experienced  
5 legal counsel.

6           11.2 Cooperation to Complete Settlement – The parties and their respective  
7 counsel agree to use their best efforts and to cooperate fully with one another (a) in  
8 seeking preliminary and final Court approval of this settlement; and (b) effectuating the  
9 full consummation of the settlement provided for herein.

10          11.3 Authority to Execute – Each counsel or other person executing this  
11 Settlement Agreement on behalf of any party hereto warrants that such person has the  
12 authority to do so.

13          11.4 Execution of Counterparts – This Settlement Agreement may be executed  
14 in any number of counterparts, each of which shall be deemed to be an original but all  
15 of which together shall constitute one and the same instrument. Executed counterparts  
16 shall be deemed valid if delivered by mail, courier, electronically, or by facsimile.

17          11.5 Binding Effect of Settlement – This Settlement Agreement shall be binding  
18 upon and inure to the benefit of the settling parties (including all Settlement Class  
19 members who do not opt out of the settlement described in this Settlement Agreement),  
20 their respective agents, attorneys, insurers, employees, representatives, officers,  
21 directors, partners, divisions, subsidiaries, affiliates, associates, assigns, heirs,  
22 successors in interest and shareholders and any trustee or other officer appointed in the  
23 event of a bankruptcy.

24          11.6 The waiver by any party of a breach of this Settlement Agreement by any  
25 other party shall not be deemed a waiver of any other breach of this Settlement  
26 Agreement.

27          11.7 Entire Agreement – This Settlement Agreement and any exhibits attached  
28 to it constitute the entire agreement between the parties hereto and supersede any prior

1 agreements or understandings whether oral, written, express or implied between the  
2 parties with respect to the settlement.

3 11.8 Amendments – No amendment, change, or modification of this Settlement  
4 Agreement or any part thereof shall be valid unless in writing, signed by all parties and  
5 their counsel, and approved by the Court.

6 11.9 Advice of Counsel – The parties to this Settlement Agreement each  
7 represent to the other that they have received independent legal advice from attorneys of  
8 their own choosing with respect to the advisability of making the settlement provided  
9 for in this Settlement Agreement, and with respect to the advisability of executing this  
10 Settlement Agreement, that they have read this Settlement Agreement in its entirety and  
11 fully understand its contents, and that each is executing this Settlement Agreement as a  
12 free and voluntary act.

13 11.10 Notice – Except as otherwise provided herein, all notices, requests,  
14 demands and other communications required or permitted to be given pursuant to this  
15 Settlement Agreement shall be in writing and shall be delivered personally, by  
16 facsimile, by e-mail, or by overnight mail, to the undersigned counsel for the parties at  
17 their respective addresses.

18 11.11 Headings – The titles and captions contained in this Settlement Agreement  
19 are inserted only as a matter of convenience and for reference, and shall in no way be  
20 construed to define, limit, or extend the scope of this Settlement Agreement or the intent  
21 of any of its provisions. This Settlement Agreement shall be construed without regard to  
22 its drafter, and shall be construed as though the parties participated equally in the  
23 drafting of this Settlement Agreement.

24 11.12 The Court shall retain jurisdiction with respect to the implementation and  
25 enforcement of the terms of the Stipulation and the parties to the Stipulation submit to  
26 the jurisdiction of the Court for those purposes.

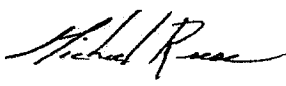
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IN WITNESS WHEREOF, Wendy's International, Inc. and Catherine Fitch, Adam Jernow, Leah McLawrence and Bokhyun Yoo on behalf of themselves and all others similarly situated, by their respective attorneys, have caused this Settlement Agreement to be executed as of the day and year first written above.

  
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