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12 and the Proposed Class

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22 Attorneys for Defendant Wise Company, Inc.

23 **UNITED STATES DISTRICT COURT**  
24 **CENTRAL DISTRICT OF CALIFORNIA**

25 NICHOLAS MILLER and JEFFREY  
26 BORNEMAN, individually and on  
27 behalf of all others similarly situated,

28 Plaintiffs,

vs.

WISE COMPANY INC.,

Defendant.

) Case No: 5:17-cv-00616-JAK-PLA

) **CLASS ACTION**

) **[PROPOSED] PRELIMINARY**  
) **APPROVAL ORDER**

1 The case before the Court is a consumer class action on behalf of a proposed  
2 California class of customers of Defendant Wise Company, LLC (“Wise”) who  
3 purchased certain “Long-Term Food Kits” produced and distributed by Wise.  
4 Plaintiffs allege that Wise misrepresented, and/or omitted material information  
5 about, how long the products would “last” and how many people they would  
6 “feed.”

7 The parties, through their respective counsel, have executed and filed with  
8 the Court a Settlement Agreement that resolves all alleged claims in exchange for  
9 monetary and injunctive relief. The Court, having reviewed the Settlement  
10 Agreement, including the exhibits thereto, and considered the briefing submitted in  
11 support of Plaintiffs’ unopposed Motion for Preliminary Approval and the  
12 arguments of counsel thereon, finds that the terms of the proposed Settlement  
13 appear fair, reasonable and adequate, and within the range likely to receive the  
14 Court’s subsequent final approval. The Court therefore hereby GRANTS the  
15 motion and ORDERS as follows.

16 1. Except as otherwise stated, this Order incorporates the defined terms  
17 set forth in the Settlement Agreement.

18 2. For purposes of settlement, and conditioned upon the Settlement  
19 Agreement receiving final approval following the Fairness Hearing, the Court  
20 conditionally certifies the following Settlement Class pursuant to Federal Rule of  
21 Civil Procedure 23(b)(3):

22 All persons who purchased one or more of the following products (“Eligible  
23 Products”) for shipment to California during the period February 15, 2013  
24 through December 31, 2017:

25 1-Month Emergency Food Supply Box;

26 56 Serving Breakfast/Entrée Bucket;

27 84 Serving Grab and Go Bucket;

28 240 Serving Long Term Food Supply Package;

- 1 3-Month Emergency Food Supply Box;
- 2 360 Serving Long Term Food Supply Package;
- 3 6-Month Emergency Food Supply Box;
- 4 720 Serving Long Term Food Supply Package;
- 5 1080 Serving Long Term Food Supply Package;
- 6 12-Month Emergency Food Supply Box;
- 7 1440 Serving Long Term Food Supply Package;
- 8 2160 Serving Long Term Food Supply Package;
- 9 2880 Serving Long Term Food Supply Package;
- 10 4320 Serving Long Term Food Supply Package;
- 11 Ultimate Emergency Prepper Pack, 1 Month for 2 adults;
- 12 Ultimate Emergency Prepper Pack, 1 Month for 4 adults;
- 13 Ultimate Emergency Prepper Pack, 3 Months for 1 adult;
- 14 Ultimate Emergency Prepper Pack, 3 Months for 2 adults.

15 Excluded from the Settlement Class are: (1) the current and former  
16 employees, officers and directors of Wise and its agents, subsidiaries, parents,  
17 successors, predecessors, and assigns; (2) the judge to whom this case is assigned  
18 and the judge's immediate family; and (3) any person who executes and files a  
19 timely request for exclusion from the Class.

20 3. With respect to the Settlement Class, the Court preliminarily finds,  
21 solely for purposes of effectuating the Settlement and for no other purpose, that (i)  
22 the members of the Settlement Class are so numerous that joinder of all Settlement  
23 Class members in the Action would be impracticable, as the Settlement Class  
24 comprises thousands of members; (ii) there are questions of law and fact common  
25 to the Settlement Class that predominate over individual questions, including  
26 whether the Wise Website and product packaging contains deceptive statements  
27 and/or omissions about the quantity and quality of food in Wise’s Long-Term Food  
28 Kits, whether those representations would be material to the reasonable consumer

1 deciding whether to purchase a Long-Term Food Kit, and whether consumers have  
2 been harmed; (iii) the claims of the representative Plaintiffs are typical of the claims  
3 of the Settlement Class, and they do not have any conflicts of interest with the other  
4 Class Members; (iv) Plaintiffs and Plaintiffs' Counsel can fairly and adequately  
5 represent and protect the interests of the Settlement Class members, as shown by  
6 their qualifications and experience and services performed to date; and (v) a class  
7 action is superior to other available methods for the fair and efficient adjudication  
8 of the controversy as it relates to the proposed Settlement, considering the interests  
9 of the Settlement Class members in individually controlling the prosecution of  
10 separate actions, the extent and nature of any litigation concerning the controversy  
11 already commenced by Settlement Class members, the desirability or undesirability  
12 of continuing the litigation of these claims in this forum, and the difficulties likely  
13 to be encountered in the management of a class action as it relates to the proposed  
14 Settlement.

15 4. The Settlement, on the terms and conditions set forth in the Settlement  
16 Agreement, is preliminarily approved by this Court as being fair, reasonable,  
17 adequate, and within the range of possible final judicial approval. The Court finds  
18 that the Settlement resulted from arm's-length negotiations conducted in good faith  
19 by the Parties, under the auspices of a highly experienced and neutral mediator, and  
20 reflects a settlement that was reached voluntarily after consultation with  
21 experienced legal counsel.

22 5. The Court provisionally finds that the named Plaintiffs, Nicholas  
23 Miller and Jeffrey Borneman, are able to fairly and adequately represent the  
24 Settlement Class and appoints them as the Class Representatives.

25 6. The Court appoints Mark A. Chavez and Nance F. Becker of Chavez  
26 & Gertler LLP, Michael D. Braun of the Braun Law Group, P.C., and Andrew  
27 Kierstead of the Law Offices of Andrew Kierstead to serve as legal counsel for the  
28

1 Settlement Class (“Class Counsel”), with the Court provisionally finding that all of  
2 these attorneys are able to fairly and adequately represent the Settlement Class.

3 7. The Court approves the Claim Form attached to the Settlement  
4 Agreement as Exhibit A.

5 8. The Court orders Wise to pay the estimated costs of settlement  
6 administration, \$110,000, to the Settlement Administrator within seven (7) days  
7 after entry of this Order.

8 9. The Court approves the notice plan set forth in the Settlement  
9 Agreement and the forms of notice attached as Exhibits B-1, B-2, B-3, B-4 and B-5  
10 thereto. The Court finds that the Settlement Class Notice provides a sufficiently  
11 clear and concise description of the Action, the Settlement terms, and the rights and  
12 responsibilities of the Settlement Class Members, and that the dissemination of the  
13 Settlement Class Notice through email, U.S. Mail, website and digital media as set  
14 forth in the Settlement Agreement is the best means practicable, and is reasonably  
15 calculated, to apprise the Settlement Class Members of the litigation and their right  
16 to participate in, object to, or exclude themselves from the Settlement.  
17 Accordingly, the Parties are directed to disseminate the Settlement Class Notice  
18 pursuant to the terms of the Settlement Agreement.

19 10. The Court approves and appoints KCC as the Settlement  
20 Administrator, and directs them to perform the duties set forth in the Settlement  
21 Agreement. As set forth in the Settlement Agreement, Wise shall pay all costs and  
22 expenses incurred by the Settlement Administrator in connection with  
23 disseminating the notice and administering the Settlement, not to exceed \$110,000.

24 11. The Court will conduct a Fairness Hearing, at which it will consider  
25 any objections to the Settlement Agreement and determine whether the Settlement  
26 Agreement should be finally approved, on \_\_\_\_\_, 2018 commencing at  
27 \_\_\_\_\_.

28

1           12. Plaintiffs' Counsel shall file their motion for an Award of Attorneys'  
2 Fees and Expenses and for Service Awards to the Class Representatives no later  
3 than fourteen (14) days prior to the deadline for submission of Requests for  
4 Exclusion and Objections. The Court will rule upon the motion at the Fairness  
5 Hearing. As set forth in the Settlement Agreement, all such awards shall be paid by  
6 Wise in addition to the payments due to Authorized Claimants.

7           Any Settlement Class Member who intends to object to the fairness,  
8 reasonableness, or adequacy of the Settlement, the proposed Attorneys' Fee and  
9 Expenses Award, and/or the proposed Service Awards, must file copies of any  
10 papers they propose to submit with the Clerk of the Court, and either (i) file the  
11 objection through the Court's ECF system if they are represented by counsel, or (ii)  
12 send copies of such papers by mail, hand, or overnight delivery service to the  
13 following:

14           For Plaintiffs:  
15           Mark A. Chavez  
16           CHAVEZ & GERTLER LLP  
              42 Miller Avenue  
              Mill Valley, California 94941

17           For Defendant:  
18           Rick Shackelford  
19           Greenberg Traurig LLP  
              1840 Century Park East, Suite 1900  
              Los Angeles, CA 90067

20           Any objection must include: the objector's name and address; their  
21 arguments, citations, and evidence supporting the objection, including any  
22 documents relied on; a statement that they purchased one or more Eligible Products  
23 during the Class Period and are a Settlement Class Member; their physical  
24 signature; and a statement indicating whether they intend to appear at the Fairness  
25 Hearing with or without counsel. All objections must be filed with the Court and  
26 delivered to Defendant's Counsel and Lead Class Counsel not later than 75 days  
27 after the date that notice is first disseminated.

28

1 No person will be entitled to be heard at the Fairness Hearing, and no written  
2 objections will be received or considered by this Court at the Fairness Hearing,  
3 unless all pertinent terms and conditions set forth above and in the Settlement Class  
4 Notice have been fully met. If an objection is overruled, the objecting Settlement  
5 Class Member will be bound by the terms of the Settlement and may not exclude  
6 themselves later. Any person who elects to opt out of the Settlement Class shall not  
7 be bound by any orders or Judgment entered in this Action, not be entitled to relief  
8 under the Settlement Agreement, not gain any rights by virtue of the Settlement  
9 Agreement, and not be entitled to object to any aspect of the Settlement Agreement.  
10 No person may opt out of the Settlement Class through a so-called “mass” or  
11 “class” opt-out.

12 13. Any Settlement Class Member who wishes to be excluded from the  
13 Settlement must fully comply with all pertinent terms and conditions set forth in the  
14 Settlement Class Notice. All Requests for Exclusion must be postmarked not later  
15 than 75 days after the date that notice is first disseminated. Settlement Class  
16 Members who submit a timely and valid Request for Exclusion will have no rights  
17 under the Settlement Agreement, will not share in the distribution of the Net  
18 Settlement Amount, and will not be bound by the Settlement Agreement. Any  
19 Settlement Class Member who does not submit a timely and valid Request for  
20 Exclusion shall be bound by all terms of the Settlement Agreement and the  
21 Judgment.

22 14. No later than 21 days prior to the Fairness Hearing, the Settlement  
23 Administrator shall provide a declaration to Plaintiffs’ Counsel and Wise’s counsel  
24 attesting to the measures taken to provide the Class Notice to the Settlement Class  
25 Members and the number of requests for exclusion, if any. No later than 14 days  
26 after the deadline for Settlement Class Members to submit a Claim Form, the  
27 Settlement Administrator shall provide a declaration to Plaintiffs’ Counsel and  
28



1 Wise’s counsel attesting to the number of Claim Forms received and the claimant  
2 and payment information for all claims to be paid and disallowed.

3 15. In the event this Court does not finally approve the Settlement  
4 Agreement or the Judgment is not entered, any and all rights of the Parties existing  
5 prior to the execution of the Settlement Agreement, including but not limited to  
6 Plaintiffs’ right to seek and Wise’s right to oppose class certification, shall be  
7 preserved, and the Action shall proceed in all respects as if the Settlement  
8 Agreement and any related orders had not been entered. In such event, none of the  
9 terms of the Settlement Agreement shall be admissible in any trial or otherwise  
10 used against any Party, except to enforce the terms thereof that relate to the Parties’  
11 obligations in the event of termination. Any funds transferred to the Settlement  
12 Administrator by Wise shall be returned to Wise, less notice and administrative  
13 expenses incurred through that date (as to which Wise shall have no right of  
14 reimbursement from any person, including the Settlement Administrator, Plaintiffs  
15 or Plaintiffs’ Counsel). If the funds transferred to the Settlement Administrator are  
16 not sufficient to pay all of the notice and administrative expenses incurred by the  
17 Settlement Administrator, Wise shall separately pay to the Settlement Administrator  
18 any additional amounts owing at the time of termination.

19 16. For the benefit of the Settlement Class Members and as provided in the  
20 Settlement Agreement, this Court retains continuing jurisdiction over the  
21 implementation, interpretation, and enforcement of the Settlement Agreement.

22 17. The Parties are directed to carry out their obligations under the  
23 Settlement Agreement.

24 **Summary of Applicable Dates**

- 25 1. Preliminary Approval Order (PA) entered (TBD)
- 26 2. Wise to pay estimated administrative costs to Settlement Administrator (PA +7)
- 27 3. Wise to provide Class List and Purchase Information to Settlement Administrator (PA +14)
- 28



- 1 4. Notice to be sent and published (ND), and (PA +30)  
2 Settlement Website to be activated
- 3 5. Motion for Award of Attorneys' Fees and (OD -14)  
4 Expenses and for Service Awards to be  
filed
- 5 6. Deadline to Opt Out or Object (OD) (ND +75)
- 6 7. Deadline for Settlement Administrator to (FH -21)  
7 Submit Compliance Declaration re.  
Notice and Opt-Outs
- 8 8. Fairness Hearing (FH) (TBD)
- 9 9. Deadline to submit a Claim Form (CD) (ND + 75)
- 10 10. Deadline for Settlement Administrator to (CD +14)  
11 Submit Compliance Declaration re.  
Claims

12 **SO ORDERED.**

13  
14 Dated: \_\_\_\_\_

15 Hon. John A. Kronstadt  
16 U.S. District Court Judge

17  
18 *Additional counsel for Plaintiffs:*

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