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THE HONORABLE BENJAMIN H. SETTLE  
(On Reference to The Honorable J. Richard Creatura)

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
TACOMA DIVISION

EVAN BROWN, Individually and on Behalf  
of All Others Similarly Situated,

Plaintiff,

v.

PAPA MURPHY’S HOLDINGS, INC. and  
WELDON SPANGLER,

Defendants.

Case No. 19-cv-05514-BHS-JRC

SECOND AMENDED ORDER  
PRELIMINARILY APPROVING  
SETTLEMENT AND PROVIDING FOR  
NOTICE

NOTE ON MOTION CALENDAR:  
December 17, 2021

1 WHEREAS, the Court-appointed Lead Plaintiff Evan Brown (“Lead Plaintiff”) in the  
2 above-captioned action (the “Litigation”) has made a motion, pursuant to Federal Rule of Civil  
3 Procedure 23(e), for an order preliminarily approving the Settlement of this Litigation, in  
4 accordance with a Stipulation of Settlement dated November 29, 2021 (the “Stipulation”), which,  
5 together with the Exhibits annexed thereto, sets forth the terms and conditions for a proposed  
6 Settlement of the Litigation between the Settling Parties and for dismissal with prejudice of the  
7 Litigation against Defendants and of the Released Claims against Defendants and Defendants’  
8 Released Parties upon the terms and conditions set forth therein;

9 WHEREAS, the Court has read and considered the Stipulation and the Exhibits annexed  
10 thereto;

11 WHEREAS, the Settling Parties to the Stipulation have consented to entry of this Order;  
12 and

13 WHEREAS, unless otherwise defined, all capitalized terms used herein have the same  
14 meanings as set forth in the Stipulation.

15 NOW, THEREFORE, IT IS HEREBY ORDERED:

16 1. **Preliminary Approval of Settlement:** The Court has reviewed the Stipulation, and  
17 finds that the Settlement resulted from arm’s-length negotiations, and does hereby preliminarily  
18 approve the Stipulation and Settlement set forth therein as being fair, reasonable, and adequate to  
19 Settlement Class Members, subject to further consideration at the hearing described in ¶ 3 below.

20 2. **Certification of the Settlement Class:** Pursuant to Rules 23(a) and (b)(3) of the  
21 Federal Rules of Civil Procedure, and for purposes of this Settlement only, the Litigation is hereby  
22 certified as a class action on behalf of all record holders and all beneficial holders of Papa  
23 Murphy’s Holdings, Inc. (“Papa Murphy’s”) common stock who purchased, sold, or held such  
24 stock during the period from and including April 25, 2019, the date of the Tender Offer and the  
25 date of filing of the Schedule 14D-9, through and including May 22, 2019, the date the Tender  
26 Offer expired, including any and all of their respective predecessors, successors, trustees,

1 executors, administrators, estates, legal representatives, heirs, assigns and transferees (the  
2 “Settlement Class”).

3 (a) Excluded from the Settlement Class are (i) Defendants; (ii) the Directors; (iii) each  
4 Supporting Stockholder, as that term is defined in the Recommendation Statement,  
5 who entered into a Tender and Support Agreement in connection with the Tender  
6 Offer; (iv) members of the immediate families of each of the Defendants, Directors,  
7 and Supporting Stockholders; (v) any entity in which any of the Defendants, Directors,  
8 or Supporting Stockholders has a controlling interest; (vi) the legal representatives,  
9 heirs, successors, administrators, executors, and assigns of any of the Defendants,  
10 Directors, and Supporting Stockholders; and (vii) any Persons or entities who properly  
11 exclude themselves by filing a valid and timely request for exclusion.

12 (b) The Court finds, for the purposes of the Settlement only, that the prerequisites for a  
13 class action under Rules 23(a) and (b)(3) of the Federal Rules of Civil Procedure have  
14 been satisfied in that: (a) the number of Settlement Class Members is so numerous that  
15 joinder of all members is impracticable; (b) there are questions of law and fact  
16 common to the Settlement Class Members; (c) the claims of Lead Plaintiff are typical  
17 of the claims of the Settlement Class Members he seeks to represent; (d) Lead Plaintiff  
18 and Plaintiff’s Counsel have and will fairly and adequately represent the interests of  
19 the Settlement Class; (e) the questions of law and fact common to the Settlement Class  
20 Members predominate over any questions affecting only individual Settlement Class  
21 Members; and (f) a class action is superior to other available methods for the fair and  
22 efficient adjudication of the controversy.

23 (c) Pursuant to Rule 23 of the Federal Rules of Civil Procedure, and for the purposes of  
24 the Settlement only, Lead Plaintiff is certified as the class representative, Monteverde  
25 & Associates PC is certified as Lead Counsel, and Breskin, Johnson & Townsend  
26 PLLC is certified as Liaison Counsel.

1           3.     **Settlement Hearing:** A hearing shall be held before this Court on **April 27, 2022**  
2 (a date that is at least 110 calendar days from the date of this Order) (the “Final Approval  
3 Hearing”). Settlement Class Members should check the Settlement Class website in advance of  
4 the Final Approval Hearing to determine whether that hearing will occur in person at the United  
5 States District Court for the Western District of Washington, Tacoma Division, 1717 Pacific  
6 Avenue, Tacoma, WA 98402, or via a remote link. At the Final Approval Hearing the Court will  
7 (a) determine whether the proposed Settlement is fair, reasonable, and adequate to the Settlement  
8 Class and should be approved by the Court; (b) determine whether an Order and Final Judgment  
9 as defined in ¶ 1.19 of the Stipulation should be entered; (c) determine whether the proposed Plan  
10 of Allocation should be approved; (d) determine the amount of attorneys’ fees and expenses that  
11 should be awarded to Lead Counsel; (e) determine any award to Lead Plaintiff pursuant to 15  
12 U.S.C. § 78u-4(a)(4); (f) hear any objections by Settlement Class Members to: (i) the Settlement  
13 or Plan of Allocation, (ii) the award of attorneys’ fees and expenses to Lead Counsel, and/or (iii)  
14 any award to Lead Plaintiff; and (g) consider such other matters the Court deems appropriate.  
15 The Court may adjourn the Final Approval Hearing without further notice to the Settlement Class  
16 Members.

17           4.     The Court approves the form, substance, and requirements of the Notice of  
18 Pendency and Proposed Settlement of Class Action (“Notice”) and Proof of Claim and Release,  
19 substantially in the forms annexed hereto as Exhibits A-1 and A-2, respectively.

20           5.     The Court approves the form of the Summary Notice, substantially in the form  
21 annexed hereto as Exhibit A-3.

22           6.     **Retention of Claims Administrator and Method of Giving Notice:** The firm of  
23 RG/2 Claims Administration LLC (the “Claims Administrator”) is hereby appointed to supervise  
24 and administer the notice procedure as well as the processing of claims as more fully set forth  
25 below.  
26

- 1 (a) The Claims Administrator shall make reasonable efforts to identify all Settlement  
2 Class Members and not later than **January 28, 2022** (a date twenty-one (21) calendar  
3 days after the Court signs and enters this Order) (the “Notice Date”), the Claims  
4 Administrator shall cause a copy of the Notice and Proof of Claim and Release,  
5 substantially in the forms annexed hereto, to be mailed by First-Class Mail to all  
6 Settlement Class Members who can be identified with reasonable effort and to be  
7 posted on its website at [www.rg2claims.com/papamurphy.html](http://www.rg2claims.com/papamurphy.html).
- 8 (b) Not later than **February 7, 2022** (a date ten (10) calendar days after the Notice Date),  
9 Monteverde & Associates PC shall cause the Summary Notice to be published in  
10 *PRNewswire*.
- 11 (c) Not later than **April 20, 2022** (a date seven (7) calendar days prior to the Final  
12 Approval Hearing), Lead Counsel shall serve on Defendants’ Counsel and file with  
13 the Court proof, by affidavit or declaration, of such mailing and publishing referenced  
14 in ¶ 6(a)-(b).
- 15 (d) Nominees who held, purchased, or acquired Papa Murphy’s common stock for the  
16 benefit of another Person during the Settlement Class Period shall be requested to send  
17 the Notice and Proof of Claim and Release to such beneficial owners of Papa  
18 Murphy’s common stock within fifteen (15) calendar days after receipt thereof, or,  
19 send a list of the names and addresses of such beneficial owners to the Claims  
20 Administrator within fifteen (15) calendar days of receipt thereof, in which event the  
21 Claims Administrator shall promptly mail the Notice and Proof of Claim and Release  
22 to such beneficial owners.

23 7. The form and content of the notice program described herein and the methods set  
24 forth herein for notifying the Settlement Class of the Settlement and its terms and conditions, the  
25 Fee and Expense Application, and the Plan of Allocation: (a) meet the requirements of Federal  
26 Rule of Civil Procedure 23, the United States Constitution (including the Due Process Clause),

1 the Private Securities Litigation Reform Act of 1995 (the “PSLRA”), 15 U.S.C. § 78u-4(a)(7),  
2 and any other applicable law, and is the best notice practicable under the circumstances; (b)  
3 constitutes notice that is reasonably calculated, under the circumstances, to apprise the Settlement  
4 Class Members of the pendency of the Litigation, the effect of the proposed Settlement (including  
5 the releases contained therein), and their right to object to the proposed Settlement, exclude  
6 themselves from the Settlement Class, and/or appear at the Final Approval Hearing; and (c)  
7 constitutes due, adequate, and sufficient notice to all Persons entitled thereto. The date and time  
8 of the Final Approval Hearing shall be included in the Notice and Summary Notice before they  
9 are mailed and published, respectively. All fees, costs, and expenses incurred in notifying  
10 Settlement Class Members shall be paid from the Settlement Fund and in no event shall any of  
11 the Defendants or Defendants’ Released Parties bear any responsibility for such fees, costs, or  
12 expenses. All Settlement Class Members (except Persons who request exclusion pursuant to ¶ 10  
13 below) shall be bound by all determinations and judgments in the Litigation concerning the  
14 Settlement, including, but not limited to, the releases provided for therein, whether favorable or  
15 unfavorable to the Settlement Class, regardless of whether such Persons seek or obtain by any  
16 means, including, without limitation, by submitting a Proof of Claim and Release or any similar  
17 document, any distribution from the Settlement Fund or the Net Settlement Fund.

18 8. Pending final determination by the Court as to whether the Settlement, as set forth  
19 in the Stipulation, is fair, reasonable, and adequate and should be finally approved and whether  
20 the Order and Final Judgment dismissing the action with prejudice should be approved, neither  
21 Lead Plaintiff nor any Settlement Class Member, either directly, representatively or in any other  
22 capacity, shall assert, commence, aid or prosecute any of the Released Claims against any of the  
23 Defendants or Defendants’ Released Parties in this Litigation or in any other proceeding,  
24 arbitration, or forum. This injunction is necessary to protect and effectuate the Settlement, this  
25 Order, and the Court’s flexibility and authority to effectuate the Settlement and to enter judgment  
26 when appropriate, and is ordered in aid of the Court’s jurisdiction and to protect its judgments.

1           9.     **Settlement Class Members' Participation in the Settlement:** Settlement Class  
2 Members who wish to participate in the Settlement shall complete and submit the Proof of Claim  
3 and Release in accordance with the instructions contained therein. Unless the Court orders  
4 otherwise, all Proofs of Claim and Releases must be postmarked or submitted electronically no  
5 later than **May 28, 2022** (a date one hundred and twenty (120) calendar days from the Notice  
6 Date). Any Settlement Class Member who fails to submit a Proof of Claim and Release within  
7 the time provided, or whose Proof of Claim and Release is otherwise not approved, shall in all  
8 other respects be bound by all of the terms of the Stipulation and the Settlement, including the  
9 terms of the Order and Final Judgment and the releases provided for therein, and will be barred  
10 from asserting any Released Claims against any of the Defendants or Defendants' Released  
11 Parties. Notwithstanding the foregoing, Lead Counsel shall have the discretion (but not the  
12 obligation) to accept late-submitted claims for processing by the Claims Administrator so long as  
13 distribution of the Net Settlement Fund is not materially delayed thereby. No person shall have  
14 any claim against Lead Plaintiff, Plaintiff's Counsel, or the Claims Administrator by reason of  
15 the decision to exercise or not exercise such discretion.

16           (a) The Proof of Claim and Release submitted by each Settlement Class Member must,  
17 unless otherwise ordered by the Court: (i) be properly completed, signed, and submitted  
18 in a timely manner in accordance with the provisions of the preceding paragraph; (ii)  
19 be accompanied by adequate supporting documentation for the transactions reported  
20 therein, in the form of broker confirmation slips, broker account statements, an  
21 authorized statement from the broker containing the transactional information found in  
22 a broker confirmation slip, or such other documentation deemed adequate by Lead  
23 Counsel or the Claims Administrator; (iii) include in the Proof of Claim and Release a  
24 certification of current authority to act on behalf of the Settlement Class Member if the  
25 person executing the Proof of Claim and Release is acting in a representative capacity;  
26

1 (iv) be complete and contain no material deletions or modifications of any of the printed  
2 matter contained therein; and (v) be signed under penalty of perjury.

3 (b) By submitting a Proof of Claim, a Settlement Class Member will be deemed to have  
4 submitted to the jurisdiction of this Court with respect to the Settlement Class  
5 Member's claim, including, but not limited to, all releases provided for in the  
6 Stipulation and in the Order and Final Judgment.

7 (c) Any Settlement Class Member may enter an appearance in the Litigation, at his, her,  
8 or its own expense, individually or through counsel of their own choice. If they do not  
9 enter an appearance, they will be represented by Plaintiff's Counsel.

10 10. **Exclusion from the Settlement Class:** Any Person falling within the definition of  
11 the Settlement Class may, upon request, be excluded from or "opt out" of the Settlement Class.  
12 Any such Person must submit to the Claims Administrator a request for exclusion ("Request for  
13 Exclusion"), by First-Class Mail such that it is received no later than **April 6, 2022** (a date twenty-  
14 one (21) calendar days before the Final Approval Hearing). A Request for Exclusion must be  
15 signed and state: (a) the name, address, and telephone number of the Person requesting exclusion;  
16 (b) the number of shares of Papa Murphy's stock held, acquired, or sold during the Settlement  
17 Class Period and the dates held during the Settlement Class Period; and (c) that the Person wishes  
18 to be excluded from the Settlement Class. All Persons who submit valid and timely Requests for  
19 Exclusion in the manner set forth in this paragraph shall have no rights under the Stipulation,  
20 shall not share in the distribution of the Net Settlement Fund, and shall not be bound by the  
21 Stipulation or any final judgment.

22 Lead Counsel shall cause to be provided to Defendants' Counsel copies of all Requests  
23 for Exclusion and a list of all Settlement Class Members who have requested exclusion, and any  
24 written revocation of Requests for Exclusion, as expeditiously as possible and in any event no  
25 later than **April 13, 2022** (a date fourteen (14) calendar days prior to the Final Approval Hearing).  
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1           11. **Appearance and Objections at Settlement Hearing:** Any Settlement Class  
2 Member may appear and object if he, she, or it has any reason why the proposed Settlement of  
3 the Litigation should not be approved as fair, reasonable, and adequate, or why a judgment should  
4 not be entered thereon, why the Plan of Allocation should not be approved, why the requested  
5 attorneys' fees and expenses should not be awarded to Lead Counsel, or why any award should  
6 not be approved for Lead Plaintiff; provided, however, that no Settlement Class Member or any  
7 other Person shall be heard or entitled to contest the approval of the terms and conditions of the  
8 proposed Settlement, or, if approved, the Order and Final Judgment to be entered thereon  
9 approving the same, or the order approving the Plan of Allocation, any attorneys' fees and  
10 expenses to be awarded to Lead Counsel, or any award to Lead Plaintiff, unless written objections  
11 and copies of any papers and briefs are received via mail and in electronic format by Monteverde  
12 & Associates PC, Juan E. Monteverde, The Empire State Building, 350 Fifth Avenue, Suite 4405,  
13 New York, NY 10118, Email: [jmonteverde@monteverdelaw.com](mailto:jmonteverde@monteverdelaw.com); Perkins Coie LLP, Ronald L.  
14 Berenstain and Sean C. Knowles, 1201 3rd Ave., Suite 4900, Seattle, WA 98101, Email:  
15 [RBerenstain@perkinscoie.com](mailto:RBerenstain@perkinscoie.com) and [SKnowles@perkinscoie.com](mailto:SKnowles@perkinscoie.com), no later than **April 6, 2022** (a  
16 date twenty-one (21) calendar days before the Final Approval Hearing) and said objections,  
17 papers and briefs are filed with the Clerk of the United States District Court for the Western  
18 District of Washington, Tacoma Division, 1717 Pacific Avenue, Room 3100, Tacoma, WA  
19 98402, no later than **April 13, 2022** (a date fourteen (14) calendar days before the Final Approval  
20 Hearing). Any such objection must: (a) indicate the objector's name, address, and telephone  
21 number; (b) specify the reason(s) for the objection; (c) identify the date(s), price(s), and  
22 number(s) of shares of Papa Murphy's common stock held, acquired, or sold during the  
23 Settlement Class Period by the objector; (d) provide documents demonstrating such holding(s),  
24 acquisition(s) and/or sale(s); and (e) be signed by the objector. Any Settlement Class Member  
25 who does not make his, her, or its objection in the manner provided for herein shall be deemed to  
26 have waived such objection and shall forever be foreclosed from making any objection to the

1 fairness, reasonableness, or adequacy of the proposed Settlement as incorporated in the  
2 Stipulation, to the Plan of Allocation, to the award of attorneys' fees and expenses to Lead  
3 Counsel, and to any award to Lead Plaintiff, unless otherwise ordered by the Court. Attendance  
4 at the Final Approval Hearing is not necessary. However, Persons wishing to be heard orally in  
5 opposition to the approval of the Settlement, the Plan of Allocation, and/or the application for an  
6 award of attorneys' fees and expenses are required to indicate in their written objection their  
7 intention to appear at the hearing. Settlement Class Members do not need to appear at the Final  
8 Approval Hearing or take any other action to indicate their approval of the Settlement.

9       12. **Settlement Funds:** All funds held by the Escrow Agent shall be deemed and  
10 considered to be in *custodia legis* of the Court, and shall remain subject to the jurisdiction of the  
11 Court, until such time as such funds shall be distributed pursuant to the Stipulation and/or further  
12 order(s) of the Court.

13       13. **Supporting Papers:** All papers in support of the Settlement, Plan of Allocation,  
14 and any application by Lead Counsel for attorneys' fees and expenses and payment of time and  
15 expenses to Lead Plaintiff shall be filed and served no later than **March 23, 2022** (a date thirty-  
16 five (35) calendar days prior to the Final Approval Hearing) and any reply papers shall be filed  
17 and served no later than **April 20, 2022** (a date seven (7) calendar days prior to the Final Approval  
18 Hearing).

19       14. Defendants and Defendants' Released Parties shall have no responsibility for the  
20 Plan of Allocation, any application for attorneys' fees and expenses submitted by Lead Counsel,  
21 or any award to Lead Plaintiff, and such matters will be considered separately from the fairness,  
22 reasonableness, and adequacy of the Settlement.

23       15. At or after the Final Approval Hearing, the Court shall determine whether the Plan  
24 of Allocation proposed by Lead Counsel, any application for attorneys' fees and expenses, and  
25 any proposed award to Lead Plaintiff should be approved.

1           16.    **Settlement Administration Fees and Expenses:** All reasonable expenses incurred  
2 in identifying and notifying Settlement Class Members as well as administering the Settlement  
3 Fund shall be paid as set forth in the Stipulation. In the event the Court does not approve the  
4 Settlement, or it otherwise fails to become effective, neither Lead Plaintiff nor any of their  
5 counsel, including Plaintiff’s Counsel, shall have any obligation to repay any amounts actually  
6 and properly incurred or disbursed pursuant to ¶ 2.6 of the Stipulation.

7           17.    **Use of this Order:** Neither the Stipulation, nor any of its terms or provisions, nor  
8 any of the negotiations, discussions, proceedings connected with it, nor any act performed or  
9 document executed pursuant to or in furtherance of the Stipulation or the Settlement may be  
10 construed as an admission, concession, or presumption by or against any of the Defendants or  
11 Defendants’ Released Parties of the truth of any of the allegations in the Litigation, or of any  
12 liability, fault, or wrongdoing of any kind; or as a waiver by any of the Parties of any arguments,  
13 defenses, or claims he, she, or it may have in the event the Stipulation is terminated; or offered  
14 or received in evidence, or otherwise used by any person in the Litigation, or in any other action  
15 or proceeding, whether civil, criminal, or administrative, in any court, administrative agency, or  
16 other tribunal, except in connection with any proceeding to enforce the terms of the Stipulation.  
17 The Defendants, Defendants’ Released Parties, Lead Plaintiff, Settlement Class Members, and  
18 each of their counsel may file the Stipulation and/or the Order and Final Judgment in any action  
19 that may be brought against them in order to support a defense or counterclaim based on principles  
20 of res judicata, collateral estoppel, release, good faith settlement, judgment bar or reduction or  
21 any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

22           18.    **Stay and Temporary Injunction:** All proceedings in the Litigation are stayed until  
23 further order of this Court, except as may be necessary to implement the Settlement or comply  
24 with the terms of the Stipulation. Pending final determination of whether the Settlement should  
25 be approved, neither Lead Plaintiff nor any Settlement Class Member, either directly,  
26 representatively, or in any other capacity shall commence or prosecute any of the Released Claims

1 against any of the Defendants or Defendants' Released Parties in any action or proceeding in any  
2 court or tribunal.

3 19. The Court reserves the right to alter the time or the date of the Final Approval  
4 Hearing without further notice to the Settlement Class Members, provided that the time or the  
5 date of the Final Approval Hearing shall not be set at a time or date earlier than the time and date  
6 set forth in ¶ 3 above, and retains jurisdiction to consider all further applications arising out of or  
7 connected with the proposed Settlement. The Court may approve the Settlement, with such  
8 modifications as may be agreed to by the Settling Parties, if appropriate, without further notice to  
9 the Settlement Class.

10 20. **Termination of Settlement:** If the Settlement fails to become effective as defined  
11 in the Stipulation or is terminated, then, in any such event, the Stipulation, including any  
12 amendment(s) thereof, except as expressly provided in the Stipulation, and this Order shall be  
13 null and void, of no further force or effect, and without prejudice to any Settling Party, and may  
14 not be introduced as evidence or used in any actions or proceedings by any person or entity against  
15 the Settling Parties, and they shall be deemed to have reverted to their respective pre-settlement  
16 litigation positions, which includes Defendants' appeal to the Ninth Circuit of the denial of their  
17 motion to dismiss the Second Amended Complaint.

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19 **IT IS SO ORDERED.**

20 Dated this 11th day of January, 2022.

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BENJAMIN H. SETTLE  
United States District Judge