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8 *Attorney for Objector Alida Kass*

9 **UNITED STATES DISTRICT COURT**  
10 **CENTRAL DISTRICT OF CALIFORNIA**

11 KIMBERLY BIRBROWER, an individual,

12 Plaintiff,

13 vs.

14 QUORN FOODS, INC., a Delaware  
15 Corporation and DOES 1 through 100,  
16 inclusive,

17 Defendant.

18  
19 Alida Kass,

20 Objector.

Case No. 2:16-cv-01346-DMG (AJW)

**DECLARATION OF M. FRANK  
BEDNARZ IN SUPPORT OF KASS  
OBJECTION**

Date: September 1, 2017  
Time: 10:30 a.m.  
Location: Courtroom 8C

## INTRODUCTION

1 I, Michael Frank Bednarz, declare as follows:

2 1. I have personal knowledge of the facts set forth herein and, if called as a witness,  
3 could testify competently thereto.

4 2. I am an attorney with the Competitive Enterprise Institute.

5 3. On March 24, 2017, I visited my local location of Whole Foods Marketplace in  
6 the Hyde Park neighborhood of Chicago. I examined all Quorn products in the freezer case of  
7 this grocery. Except for one product, all of the Quorn items appeared to have an identical  
8 statement concerning fungi: “There are believed to be over 600,000 varieties of fungi in the  
9 world, many of which are among the most sought after foods like varieties of mushroom,  
10 truffles, and morels.” This is the same statement plaintiffs argued was misleading in their  
11 Amended Complaint (Dkt. 9), ¶ 11.

12 4. However, one product—Quorn Vegan Chik’n Cutlets—used a variant statement  
13 that omitted reference to “mushroom, truffles, and morels.” This package simply read: “There  
14 are believed to be over 600,000 varieties of fungi in the world, many of which are among the  
15 most sought after foods.”

16 5. I took photos of the front and back of the Quorn Vegan Chik’n Cutlets described  
17 above. A true and accurate copy of these photos is attached as **Exhibit 1**.

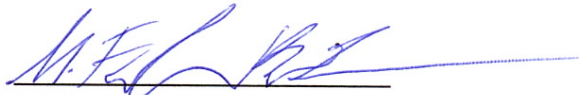
18 6. Attached as **Exhibit 2** is a true and accurate copy of the Declaration of Deborah  
19 McComb filed in *Poertner v. Gillette Co.*, No. 12-CV-00803, Dkt. 156 (M.D. Fla. April 21, 2014).

20 7. The declaration states that Kurtzman Carson Consultants determined that the  
21 median claim rate in a settlement without direct notice was 0.023%. *See* Ex. 2 ¶ 5. This is lower  
22 than the odds of being dealt a straight flush. *See* Daniel Fisher, *Odds Of A Payoff In Consumer*  
23 *Class Action? Less Than a Straight Flush*, Forbes.com (May 8, 2014), available online at  
24 [https://www.forbes.com/sites/danielfisher/2014/05/08/odds-of-a-payoff-in-consumer-](https://www.forbes.com/sites/danielfisher/2014/05/08/odds-of-a-payoff-in-consumer-class-action-less-than-a-straight-flush/)  
25 [class-action-less-than-a-straight-flush/](https://www.forbes.com/sites/danielfisher/2014/05/08/odds-of-a-payoff-in-consumer-class-action-less-than-a-straight-flush/).

1           8. Attached as **Exhibit 3** is a true and accurate copy of CSPInet.com, *Makers of*  
2 *Quorn, the Chicken-Flavored Fungus, Sued for Not Disclosing Dangerous Reactions* (Sep. 17, 2008),  
3 available online at: [https://cspinet.org/news/makers-quorn-chicken-flavored-fungus-sued-](https://cspinet.org/news/makers-quorn-chicken-flavored-fungus-sued-not-disclosing-dangerous-reactions-20090917)  
4 [not-disclosing-dangerous-reactions-20090917](https://cspinet.org/news/makers-quorn-chicken-flavored-fungus-sued-not-disclosing-dangerous-reactions-20090917) (most recently checked March 30, 2017).

5           9. I declare under penalty of perjury under the laws of the United States of America  
6 that the foregoing is true and correct.

7 Executed on March 30, 2017, in Chicago, Illinois.

8   
9 \_\_\_\_\_  
10 M. Frank Bednarz

**CERTIFICATE OF SERVICE**

I hereby certify that on this day I electronically served the foregoing on all CM/ECF participating attorneys at their registered email addresses, thus effectuating electronic service under S.D. Cal. L. Civ. R. 5.4(d).

DATED this 30th day of March, 2017.

/s/ Theodore H. Frank  
Theodore H. Frank

**CERTIFICATE OF SERVICE PURSUANT TO CLASS NOTICE  
AND PRELIMINARY APPROVAL ORDER**

Pursuant the requirements of class notice and Preliminary Approval Order, Dkt. 39 ¶¶ 20-21, I hereby certify that on this day I caused service of the forgoing on the following parties, postmarked or emailed as of this date:

Atticus Administration Attn: Objection P.O. Box 582959 Minneapolis, MN 55458	<i>Via First Class Mail</i>
Jason M. Frank, Esq. Scott H. Sims, Esq. Frank Sims & Stolper LLP 19800 MacArthur Blvd. Suite 855 Irvine, CA 92612 eyuhl@yulcarr.com	<i>Via First Class Mail and Email</i>
Eric Y. Kizirian, Esq. Lewis Brisbois Bisgaard & Smith, LLP 633 West 5th Street Suite 4000 Los Angeles, CA 90071	<i>Via First Class Mail</i>

DATED this 30th day of March, 2017.

/s/ Theodore H. Frank  
Theodore H. Frank