

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

BREEANNE BUCKLEY PENI, Individually,
and on Behalf of All Others Similarly Situated,

Plaintiff,

Civil Action No.: 22-CV-05443
Honorable Denise Cote

v.

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

Defendants.

**CONSENT MOTION TO ESTABLISH
THE PENI QUALIFIED SETTLEMENT FUND**

COMES NOW the Settlement Administrator, Edgar C. Gentle, III, and moves this Honorable Court for an Order establishing a Qualified Settlement Fund in this matter under Internal Revenue Code § 468B that shall be called the Peni Qualified Settlement Fund (the “Fund”). In support of this Motion, the Settlement Administrator states as follows:

1. The Parties have reached a proposed settlement and compromise of the disputes between them in this action as set forth in the Class Action Settlement Agreement (the “Agreement”), which was preliminarily approved by the Court in its Order Granting Preliminary Approval of Settlement on May 22, 2024.

2. Pursuant to Section 4 of the Agreement, within ten (10) business days, after the Preliminary Approval Order was signed on May 22, 2024, Plaintiff’s Counsel and the Settling Insurers shall pay a total of \$100,000 to the Fund for the Settlement Administrator to provide Class Notice. Establishment of the Fund is therefore now ripe.

3. The Settlement Administrator will obtain a Federal Taxpayer Identification Number for the Fund upon execution of an Order by this Court establishing the Fund.

4. Edgar C. Gentle, III, respectfully requests that the court grant the Settlement Administrator authority to conduct all activities necessary to administer the Qualified Settlement Fund consistent with the parties’ settlement agreement, the Court’s order granting preliminary approval of the settlement, and any further orders of the Court.

5. Edgar C. Gentle, III, further respectfully requests that the court retains personal jurisdiction over the QSF and the Claims Administrator until such time as the fund is exhausted

pursuant to the parties' Settlement Agreement and the court discharges the Claim Administrator from his duties and responsibilities imposed by the Order appointing him.

6. To the extent any paragraphs in this motion conflict, or are in any way inconsistent, with the terms and conditions of the Agreement, the Agreement shall control.

WHEREFORE the Settlement Administrator respectfully requests the Court consent to take continuing jurisdiction over the Fund, pursuant to Treas. Reg. Section 1.468B-1(c)(1), and issue an Order which:

Establishes said Peni Qualified Settlement Fund as a Qualified Settlement Fund within the meaning of Internal Revenue Code § 468B and Treasury Regulation Section 1.468B-1.

Dated: May 29, 2024

Respectfully submitted,

/s/ Edgar C. Gentle, III
Edgar C. Gentle, III
The Court Appointed Settlement
Administrator
Gentle Turner & Benson, LLC
501 Riverchase Parkway East, Suite 100
Hoover, Alabama 35244
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Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on May 29, 2024, I electronically transmitted the foregoing document to the Clerk of the United States District Court using the CM/ECF system for filing and service to all parties/counsel registered to receive copies in this case.

Dated: May 29, 2024

Respectfully submitted,

/s/ Edgar C. Gentle, III
Edgar C. Gentle, III
The Court Appointed Settlement
Administrator
Gentle Turner & Benson, LLC
501 Riverchase Parkway East, Suite 100
Hoover, Alabama 35244
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Defendants.

**[PROPOSED] ORDER ESTABLISHING
THE PENI QUALIFIED SETTLEMENT FUND**

Upon the Consent Motion of the Settlement Administrator, not opposed by the Parties, this Court issues the following Order establishing the Peni Qualified Settlement Fund for the resolution of claims brought by the Settlement Class Members, respecting certain personal injuries, through their Counsel (the “Class Counsel”) against the Settling Defendants.

1. A Class Action Settlement Agreement (the “Agreement”) was executed to resolve claims brought by the Settlement Class Members against the Settling Defendants and was preliminarily approved by this Court on May 22, 2024.
2. The Court approves and hereby establishes the Peni Qualified Settlement Fund, to be a Qualified Settlement Fund for Federal tax purposes pursuant to Internal Revenue Code § 468B and Treas. Reg. § 1.468B-1 and to resolve all claims of the Settlement Class Members against the Settling Defendants.
3. The Settlement Administrator is granted authority to conduct all activities necessary to administer the Qualified Settlement Fund consistent with the parties’ settlement agreement, the Court’s order granting preliminary approval of the settlement, and any further orders of the Court.

4. Further the court retains personal jurisdiction over the QSF and the Claims Administrator until such time as the fund is exhausted pursuant to the parties' Settlement Agreement and the court discharges the Claim Administrator from his duties and responsibilities imposed by the Order appointing him.

IT IS SO ORDERED.

Dated: _____

THE HONORABLE DENISE COTE
UNITED STATES DISTRICT JUDGE