

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

Breeanne Buckley Peni, Individually and on Behalf of
All Others Similarly Situated,

Plaintiff,

v.

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

Civil Action No. 22-cv-05443

Honorable Denise Cote

**SETTLEMENT ADMINISTRATOR’S MOTION TO FILE UNDER SEAL EXHIBIT A
DE-IDENTIFIED TABLE AND BAR DIAGRAM OF CATEGORY 5 ENHANCEMENT
POINTS AWARDED**

On October 31, 2025, Edgar C. Gentle, III, the Settlement Administrator of the Daily Harvest Crumbles Settlement (the “Settlement Administrator”), filed the Settlement Administrator’s Report and Recommendations, including Exhibit A De-Identified Table And Bar Diagram of Category 5 Enhancement (“Exhibit A”). Exhibit A includes claimant information regarding individual Settlement injuries that should remain confidential to ensure claimants cannot be identified by his or her injuries and has been redacted from the public version of the Settlement Administrator’s Report and Recommendations.

For these reasons, the Settlement Administrator respectfully requests that the Court issue an Order permitting the filing under seal of the unredacted Exhibit A.

Dated: October 31, 2025

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Ed Gentle', written in a cursive style.

Edgar C. Gentle, III
*Settlement Administrator for the
Daily Harvest Crumbles Settlement*

Gentle, Turner & Benson, LLC
501 Riverchase Parkway East, Suite 100
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SETTLEMENT ADMINISTRATOR’S REPORT RESPECTING (A) AWARD VALUES; (B) ALLOCATION OF INTEREST EARNED TO DATE AND THE STATUS OF THE SETTLEMENT HOLDBACK; (C) THE SUGGESTED CATEGORY 5 MATRIX; (D) A RECOMMENDED 10% ADVANCE PAYMENT FOR ALL DAILY HARVEST CRUMBLES CATEGORY 2 THROUGH 4 CLAIMANTS NOT TAKING INTO ACCOUNT ANY CATEGORY 5 AWARD THEY MAY RECEIVE IN THE FUTURE; (E) SUGGESTED PROCEDURES FOR PAYING CLAIMS CLEARED OF LIENS; AND (F) SUGGESTED PROCEDURE FOR PAYING AWARDS FOR THE BENEFIT OF MINOR CLAIMANTS

I, Edgar C. Gentle, III, the Settlement Administrator of the Daily Harvest Crumbles Settlement (the “Settlement Administrator”), submit the following Report and Recommendation to the Court, requesting the relief specified below.

I. REPORT

A. Award Values

Under the Court approved Allocation Model (Document 74-8), Category 5 is the Settlement Administrator’s discretionary category to be used to pay any Category 2, 3 or 4 shortfalls and to enhance awards for any claimant whose injury is verified to be causally related to the consumption of French Leek and Lentil Crumbles with tara in 2022 and is not adequately

compensated with his or her Category 2, 3, or 4 award. Based on the Allocation Model, the below table lists the individual award amounts for each category.

Table I

Qualifying Category	Category Award Value	1/3 Reduction for Unrepresented Claimants	Unrepresented Claimant Award Value
Category 1A	\$500	(\$166)	\$334
Category 1B	\$1,000	(\$333)	\$667
Category 2	\$15,000	(\$5,000)	\$10,000
Category 3	\$30,000	(\$10,000)	\$20,000
Category 4	\$130,000	(\$43,333)	\$86,667

The current number of qualifying claimants¹ in each category is listed below, along with the category award value², for a total of 1,183 qualifying claimants³:

Table II

Qualifying Category	Number of Qualifying Claims	Total Award Amount
Category 1A	65	\$22,042.00
Category 1B	413	\$281,465.00
Category 2	503	\$6,615,000.00

¹ The current number of qualifying claimants is unlikely to change, as all non-Category 5 appeal deadlines have passed and claimants either did not file an appeal with the Settlement Administrator, or the Settlement Administrator granted the appeal.

² The category award value is the claim value awarded prior to the Unrepresented Claimant 1/3 reduction.

³ The Settlement Administrator has denied 14 claims due to no proof of a Crumbles purchase being provided or found in the Crumbles recipient list provided by Daily Harvest or did not select a category designation and did not cure this information during the deficiency review. One denied claim was appealed to the Settlement Administrator and subsequently granted.

Category 3	159	\$4,650,000.00
Category 4	43	\$5,373,335.00
TOTALS	1,183	\$16,941,842.00

The below calculations are based on the estimated amounts listed in the Allocation Model⁴.

The Allocation Model calculations were based on the total Settlement Fund of \$22,999,000, and an allocation amount of \$22,500,000, which considered the estimated Administration Costs. However, after removing the Hartford Settlement Funds hold back of \$254,154.13, the hold back of \$1,000,000 and the revised projected administrative expenses of \$439,980, the actual remaining funds available for allocation are \$21,304,865.87. This is approximately a 5.3% decrease in funds available, comparing favorably with the accepted 5% Administrator Cost “handle” for settlements. Below are the calculations of the revenues available for each Category after the exact reduction percentage has been applied.

Category 1: \$473,441.46

Category 2: \$4,104,737.49

Category 3: \$5,283,606.74

Category 4: \$3,976,908.30

Category 5: \$7,466,171.88

The calculations below are the current funds being used for each Category based on the actual qualified claims filed to true the amounts per claim up to that in the Allocation Model, as contemplated in the Model.

Category 1 Funds Used: \$303,507.00 with \$169,934.46 to be added to Category 5

Category 2 Funds Used: \$6,615,000.00 with \$2,510,262.51 needed from Category 5

⁴ Daily Harvest Proposed Allocation Model. (Document 74-8).

Category 3 Funds Used: \$4,650,000.00 with \$633,606.74 to be added to Category 5

Category 4 Funds Used: \$5,373,335.00 with \$1,396,426.70 needed from Category 5

Net Category 5 Adjustments: \$3,103,148.01 needed from Category 5

This currently leaves approximately \$4.36 Million for Category 5 enhancements.

B. Allocation of Interest Earned to Date and The Status of the Settlement Holdback

Through September 30, 2025, interest earned by the Daily Harvest Peni QSF less income tax paid is approximately \$604,518.80, and interest earned by the Smirk's-Molinos Peni II QSF less income tax paid is approximately \$101,248.14.

It is recommended that this interest now earned by the Daily Harvest Peni QSF now be added ratably to the awards by first allocating the interest in proportion to the amounts shown in Table II and the \$4.36 Million for Category 5. For Categories 1 through 4, these per category interest award amounts will then be allocated amongst the claimants based upon the number in each Category 1 through 4 category depicted in Table II, then to increase the award amounts for each claimant in each category by the same amount, upwardly adjusting the awards in Table I. Table III below depicts these computations and the resulting upwardly adjusted awards.

Table III

Qualifying Category	Share of Interest	Number of Claims	Upward Adjustment Per Claimant	Category Award Value
Category 1A	0.10%	65	\$9.62	\$509.62 ⁵
Category 1B	1.32%	413	\$19.34	\$1,019.34 ⁵

⁵ Because these categories are already being paid, or are currently in payment processing, the interest instead will be added to the claimant's Smirk's-Molinos Settlement award.

Category 2	31.05%	503	\$373.16	\$15,373.16
Category 3	21.83%	159	\$829.83	\$30,829.83
Category 4	25.22%	43	\$3,545.74	\$133,545.74
Category 5	20.48%	532	\$232.71 Average ⁶	Added to Final Award Value

It is recommended that, at the end of the Daily Harvest Settlement and at the appropriate time in the Smirk's-Molinos Settlement, additional interest earned will be ratably allocated among the claimants a second time and applied to the portion of the Smirk's-Molinos Settlement awards.

There is a possibility that additional funds totaling \$1,767,100 will be available for pro rata distribution to all Daily Harvest and Smirk's Claimants. The Daily Harvest Settlement hold back amount is \$1 Million, and

[t]he Settling Defendants, through their respective Settling Insurers, shall pay into the Settlement Fund the balance of the Hold Back Amount not reasonably used by them to resolve Opt-Out claims, arbitration, or litigation by December 31, 2025, or once all of the Opt-Out claims or Opt-Out litigation are resolved, whichever date is later. Such balance shall be distributed to all Qualified Claimants on a pro rata basis within 30 days thereafter.⁷

The Smirk's-Molinos Settlement hold back amount⁸ is \$767,100, and

The Settling Defendants or their respective Settling Insurers, shall pay into the Settlement Fund the balance of the Class Action Hold Back Amount not reasonably used by them to resolve Opt-Out claims or litigation by December 31, 2026, or once all of the Opt-Out claims or Opt-Out litigation are resolved, whichever date is

⁶ This average will be ratably allocated amongst the Category 5 claimants based their Category 5 awards.

⁷ Paragraph 24, Daily Harvest Class Action Settlement Agreement. (Document 74-2).

⁸ In addition to this Smirk's-Molino hold back amount related to Opt-Out claims or litigation, there is an additional Smirk's-Molinos hold back of \$753,712.16 from the Citizens/Hanover policies for claims already made against the policies. "If any of the \$753,712.16 is not paid on those other claims, within thirty (30) days of Hanover's closing of all claims related to the Claims Hold Back Amount, Hanover will pay the remainder of the unpaid amount to the Qualified Settlement Fund, and it will then be distributed to the members of the Class Action on a pro rata basis." Paragraph 24, Smirk's-Molinos Class Action Settlement Agreement. (Document 145-1).

later. Such balance shall be distributed to all Qualified Claimants on a pro rata basis within 30 days thereafter.

C. Category 5 Extraordinary Injury Matrix

The Settlement Administrator received 532 Category 5 applications⁹, *i.e.*, approximately 75% of all Category 2, 3 and 4 claimants that were eligible to receive Category 5 enhancements have applied. The Settlement Administrator has served as a Special Master or Settlement Administrator for approximately \$6 billion of cases, with many including an extraordinary injury fund. The typical number of extraordinary injury applicants is approximately 10-15%. The number of extraordinary injury applicants in this Settlement far exceeds any case the Settlement Administrator has administered, making the allocation of the available funds very challenging and ultimately far short of the personal injury damages.

To be fair and consistent to all claimants, the Settlement Administrator created the initial objective Category 5 Extraordinary Injury Matrix (the “Initial Matrix”) found below and focused on addressing acute and static injuries. At that time the Settlement Administrator was not fully aware of the ongoing manifestations of disease and emotional trauma claimed. Due to the number of Category 5 applicants, the limited funds available, and the number of those claiming lost wages and expenses related to pre-planned life events, including vacations, honeymoons, and weddings, the Settlement Administrator limited Category 5 enhancements to medical injuries.

⁹ Category 2, 3, and 4 appeal determinations have been transmitted, with a minimal number of appeals submitted to the Settlement Administrator. All appealing claimants provided sufficient evidence and were granted. The deadline to appeal Late Claim Submittals determinations and denied claims has passed. Only one denied claim was appealed to the Settlement Administrator and was subsequently granted. As a result, these claimants will not be filing an appeal with the Court. However, due to the large number of Category 5 applicants, and the dynamic and ongoing nature of these injuries, we do anticipate a higher Court appeal rate for Category 5 claimants.

Table IV

Category 5 Enhancement Type	Points Available
Emotional/Mental Distress – Severity of Symptoms Above Average	1
Additional Hospital Visit (No Admission) for Treatment/Testing ¹⁰	1 Per Visit
Additional Emergency Room (ER) Visit ¹¹	2 Per Visit
Days Admitted to Hospital	3 Per Day
Invasive Procedure: Peripherally Inserted Central Catheter (PICC)	3
Invasive Procedure: Esophagogastroduodenoscopy (EGD)	4
Invasive Procedure: Colonoscopy	5
Invasive Procedure: Liver Biopsy	5
Invasive Procedure: Feeding Tube	6
Invasive Procedure: Endoscopic Retrograde Cholangiopancreatogram (ERCP)	7
Age at Consumption: Under 18	10
Causally Related Miscarriage	15

Each timely filed claimant was afforded the opportunity to have a Zoom interview with the Settlement Administrator. Out of the 532 Category 5 Applicants, the Settlement Administrator

¹⁰ If the initial hospital visit (a non-emergency hospital without admission) was used to qualify a Claimant as a Category 2, this initial hospital visit would not be considered an “Additional Hospital Visit”. An “Additional Hospital Visit” would include non-emergency outpatient treatment, such as labs and imaging procedures. Additional follow-up visits and treatments with your provider, including labs, will not be considered an “Additional Hospital Visit”.

¹¹ If the initial ER visit was used to qualify a claimant as a Category 2, this initial visit would not be considered an “Additional ER Visit”. However, if a claimant qualified as a Category 3 due to their hospitalization, additional ER visits, before or after the qualifying hospitalization, if related to the Crumbles consumption, may be considered an “Additional ER Visit”.

completed 160 claimant requested Zoom meetings. Those that requested a Zoom interview but could not be completed due to scheduling conflicts, were given the opportunity to provide written statements answering the below question. During each Zoom meeting, every claimant was presented the following prompt: “Please tell us how you suffered Extraordinary Damages and how you believe it may have been linked to the Daily Harvest product.” After conducting the Zoom meetings, it has become clear that in addition to the injuries listed in the above Matrix, a majority of the Category 5 claimants have experienced, and continue to experience, chronic, dynamic and ongoing injuries, including but not limited to, severe emotional distress causing physical limitations, liver damage treatment and monitoring, gastrointestinal issues (not limited to cholecystectomy claimants, and including food sensitivities, abdominal pain, and diarrhea causing drastic disruption to lifestyle), and ongoing tooth decay in toddlers and those above 65 years old related to prolonged acid reflux. The Settlement does not have the funds to address these chronic, dynamic and ongoing issues, and has determined that injuries occurring after the Daily Harvest Claim Form Deadline, or September 2, 2024, cannot be included.

To address as many injuries as possible, and maximize the value of each enhancement point, the Settlement Administrator adjusted the Initial Matrix and created the below proposed final objective Category 5 Extraordinary Injury Matrix (the “Final Matrix”).

Table V

Category 5 Enhancement Type	Points Available
Emotional/Mental Distress – Severity of Symptoms Above Average	1
Emergency Room (ER) Visit ¹²	1 Per Visit

¹² This category was initially limited to “additional” Emergency Room (ER) visits to not award Category 2 claimants who used the ER visit to qualify as a Category 2. However, all claimants who went to the ER also have some type of treatment that would have qualified them as a Category, *e.g.*, urgent care visits, primary care physician visits,

Days Admitted to Hospital ¹³	2 Per Day
Additional Treatment/Testing ¹⁴ (3 Points Total – not multiplied per visit)	3
Invasive Procedure: Peripherally Inserted Central Catheter (PICC)	3
Invasive Procedure: Esophagogastroduodenoscopy (EGD)	4
Invasive Procedure: Colonoscopy	5
Invasive Procedure: Liver Biopsy	5
Invasive Procedure: Feeding Tube	6
Invasive Procedure: Endoscopic Retrograde Cholangiopancreatogram (ERCP)	7
Pregnant, Breastfeeding, or In Vitro Fertilization (IVF) at Consumption ¹⁵	7
Age at Consumption: Under 18 or Over 65 ¹⁶	10
Causally Related Miscarriage	15

After re-reviewing all Category 5 Applicants, the number of points awarded totals 4,769 and the estimated value for each point before the Category 5 appeal hold back addressed in Part

specialists visits, and labs. As a result, the “additional” requirement has been removed, with the point value reduced to not further decrease the monetary value of each point.

¹³ The Settlement Administrator will count each calendar day as being admitted, with the points per days admitted into the hospital being reduced to not further decrease the monetary value of each point.

¹⁴ To more accurately capture additional treatment, this enhancement is no longer limited to “hospital” treatment. However, the Settlement does not have the funds to allow for 1 point for each additional treatment, as many claimants continued treatment for years after their initial injury. As a result, any additional treatment will receive an enhancement, with the point value reduced to not further decrease the monetary value of each point.

¹⁵ There are a few claimants who experienced additional treatment, medical costs, and emotional distress resulting from their consumption while they were pregnant, breastfeeding, or going through In Vitro Fertilization (IVF) that justify an additional enhancement.

¹⁶ The Settlement Administrator recognizes that food poisoning affects children and those over 65 years old, more severely, and those over 65 should also be given an enhancement.

II, is \$914.87¹⁷ before the appeals hold back described below. Exhibit A¹⁸ shows the deidentified list of Category 5 Applicants, and the points awarded for each.

The Settlement Administrator is suggesting the following: Limit awards from Category 5 appeals to the Settlement Administrator and the Court by approving the proposed Final Matrix limiting Category 5 to injuries listed in the Final Matrix and occurring before the September 2, 2024 Claim filing deadline, and a 10% appeals hold back amount, or approximately \$436,000, to ensure funds are available for upward Category 5 awards made on appeal. Any amount of the appeals hold back remaining after the appeals will be ratably paid to the Category 5 Applicants. However, in all events the amount of appeals awards made on appeal would be capped by the appeals hold back available. To be fair to all Category 5 Applicants, and possibly reduce the number of appeals, it may be beneficial to hold a virtual Court hearing for Category 5 Applicants addressing the Final Matrix and its limitations.

D. A Recommended 10% Advance Payment for All Category 2 through 4 Claimants Not Considering Any Category 5 Award They May Receive in the Future

The Settlement Administrator recognizes that unanticipated additional time was taken to review all Category 5 Applicants, complete 160 Category 5 claimant Zoom calls during September 2025, and re-reviewing all Category 5 Applicants under the Final Matrix. This has caused unexpected delays in computing final award amounts and finalizing lien resolution. In addition, due to the chronic, dynamic and ongoing nature of these injuries and the lack of funds available, we anticipate many Category 5 Applicants will be dissatisfied with their determinations. Finally, lien resolution is ongoing for all Category 2, 3, and 4 claimants, including those who did not apply

¹⁷ The estimated value for each point after the Category 5 appeal hold back is \$823.38.

¹⁸ Exhibit A was submitted to the Court *in camera*.

for Category 5, and claimants are getting increasingly frustrated that they have not yet received payment. To address these concerns, the Settlement Administrator is recommending a possible solution below.

The Settlement Administrator suggests for all claimants an advance payment of 10% of each Category 2, 3 and 4 claimants above Category Award Value in Part I, to be paid by on or before December 31, 2025, except for those with a pending bankruptcy issue.¹⁹ Because the Settlement Agreement requires liens to be resolved prior to payments being made to Qualifying Class Members, the Settlement Administrator would need the Court's approval to make advance payments.

The Settlement Administrator has served as a lien administrator for many of its settlement administrator cases. The most significant risk associated with advance payments is the possibility of lien amounts that are larger than the award amount. However, in the Settlement Administrator's experience, lienholders are willing to reduce the lien amount to allow for a one-third (1/3) split between claimants, attorneys, and lienholders. Meaning, it is very unlikely a 10% advance payment will be at risk of lienholders claiming these funds.

Because there is still some risk involved, if advance payments are made, the Settlement Administrator is requesting that Counsel for Qualifying Claimants agree to indemnify and hold the Settlement Administrator, and the Settlement, harmless for future lien amounts exceeding a claimant's gross award value less their 10% advance payment.

¹⁹ Category 1A and 1B claimants are already being paid. In addition, if there are any Category 2, 3 and 4 claimants whose liens have been resolved before the end of 2025, their Daily Harvest Settlement payment will be processed, and an advance payment will not be necessary.

E. Suggested Procedures for Paying Claims Cleared of Liens

The Settlement Administrator has reached out to all major lienholders (Medicare, Rawlings, Equin, and Optum) to resolve liens for all 286 non-Category 1 claimants²⁰ in these categories. Other than Medicare, the Settlement Administrator is pursuing global agreements with these lienholders to waive and/or cap lien amounts related to this Settlement. This process is ongoing, but for most claimants, is not likely to be resolved fully before December 2025. In addition, many lienholders are requesting the final award amounts for both the Daily Harvest Settlement and the Smirk's-Molinos Settlement, before finalizing liens. The Settlement Administrator anticipates Smirk's-Molinos Settlement Amounts to be finalized by December 31, 2025.

Under the Settlement Agreement, the Settlement Administrator is required to resolve liens for each respective claimant before the claimant is paid: "The Settlement Administrator shall mail Benefit Payment checks to Qualified Class Members as their respective liens are resolved, with the Settlement Administrator to pay liens." Two law firms, Marler Clark, Inc., PS and Bowersox Law Firm, P.C., have engaged Synergy to help with this process under the Court approved amended HIPAA orders which is much appreciated by the Settlement Administrator. To facilitate the immediate payment of claims, we suggest that the claimant's Law Firm be allowed to indemnify the Settlement Administrator and the Settlement in connection with its obligation to resolve liens prior to making payment and hold the Settlement Administrator and the Settlement harmless with respect to all lien claims for a given claimant as that claimant's liens are cleared or found to be non-existent, with the indemnification also to provide the estimated amount to be paid

²⁰ Law firms Marler Clark and Bowersox have already begun lien resolution for their clients and will be providing the Settlement Administrator the final lien resolution documents prior to funds being released.

to the claimant based upon this report for claimants other than Category 5. Category 5 claimants can go through this same process after their additional Category 5 award amount is determined and the final total claim value is computed. Consistent with the Settlement Agreement, once an individual lien is resolved, released, or determined to be non-existent, the claimant will receive his or her Category 2, 3, or 4 payment. Any Category 5 enhancement may be issued separately once the additional award amount, if any, has been finalized, and the additional Category 5 amounts are to be paid once liens thereon are resolved or the Claimant's Law Firm indemnifies the Settlement Administrator and the Settlement in connection with its obligation to resolve liens with respect to the Category 5 amount prior to making payment and holds the Settlement Administrator and the Settlement harmless with respect to all lien claims for a given claimant with respect to the Category 5 amount.

F. Recommended Procedure for Paying Awards for Minor Claimants

There are fourteen (14) claimants under the age of eighteen (18) in this Settlement. Their award amounts range from approximately \$500 to approximately \$15,000²¹. There is precedent in New York, under NY CPLR 1206(b) for paying such amounts up to \$10,000 to the parent or guardian of the minor claimant in exchange for a written undertaking to carry out their obligation to use the proceeds solely for the benefit of the minor claimant. Your Settlement Administrator proposes to draft such an Agreement for review and approval by Settlement Class Counsel. This approach has been taken in other mass settlements, including train derailments, previously

²¹ These claimants are represented by Counsel. Therefore, the amount net of fees is \$10,000 or less. Some of these claimants also have a Category 5 claim. It is proposed that any such additional amounts be taken up separately with the Court when they are ripe.

administered by your Settlement Administrator. It strikes a balance between using the Settlement payment for the immediate benefit of the child while protecting the monies from defalcation.

II. RECOMMENDATIONS

WHEREFORE, PREMISES CONSIDERED, the Settlement Administrator respectfully requests the following relief:

(A) that the Category 1, 2, 3 and 4 award values and the amount available for Category 5 set forth in part A of this report be approved;

(B) that the application of interest earned to date in the Daily Harvest Settlement made to awards as described in part B be approved;

(C) that the Category 5 extraordinary damages, Extraordinary Injury Matrix, and recommended procedures described in part C be approved;

(D) that the recommended 10% advance payment for Category 2 through 4 claimants described in part D be approved;

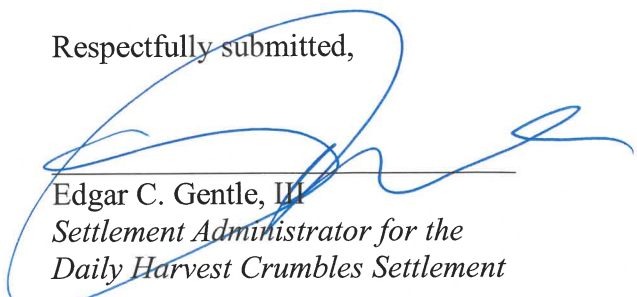
(E) that the report's recommended procedures for paying claimants described in part E after cleared of liens, and which provide for indemnification of the Settlement Administrator and the Settlement be approved;

(F) that the recommended procedure in Part F with respect to payments for the benefit of minor claimants be approved; and

(G) for such other, further, equitable or more special relief as may be proper under the premises.

Dated: October 31, 2025

Respectfully submitted,



Edgar C. Gentle, III
*Settlement Administrator for the
Daily Harvest Crumbles Settlement*

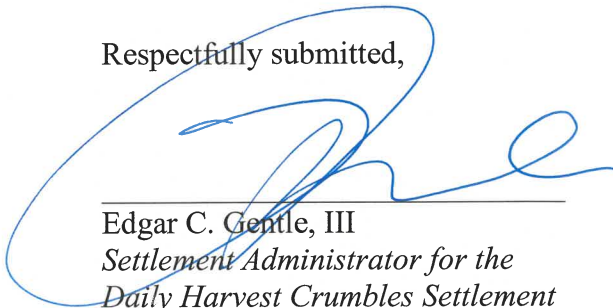
Gentle, Turner & Benson, LLC
501 Riverchase Parkway East, Suite 100
Hoover, Alabama 35244
(205) 716-3000
egentle@gtandslaw.com

CERTIFICATE OF SERVICE

I hereby certify that on October 31, 2025, at the direction and on behalf of the Settlement Administrator, Edgar C. Gentle, III, I served the foregoing Settlement Administrator's Category 5 Discretionary Fund Report and Recommendation to the Court.

Dated: October 31, 2025.

Respectfully submitted,



Edgar C. Gentle, III
*Settlement Administrator for the
Daily Harvest Crumbles Settlement*

Gentle, Turner & Benson, LLC
501 Riverchase Parkway East, Suite 100
Hoover, Alabama 35244
(205) 716-3000
egentle@gtandslaw.com

Exhibit A

De-Identified Table and Bar Diagram of Category 5 Enhancement Points Awarded

(submitted in camera with the Court and will be provided to each Category 5 claimant on a confidential basis in order to satisfy the ABA Rule 1.8(g) “Informed Consent” standard)

Exhibit B

Proposed Order

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

Breeanne Buckley Peni, Individually and on Behalf of
All Others Similarly Situated,

Plaintiff,

v.

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

Civil Action No. 22-cv-05443

Honorable Denise Cote

**[PROPOSED] ORDER GRANTING SETTLEMENT ADMINISTRATOR’S REPORT
RESPECTING (A) AWARD VALUES; (B) ALLOCATION OF INTEREST EARNED TO
DATE AND THE STATUS OF THE SETTLEMENT HOLDBACK; (C) THE SUGGESTED
CATEGORY 5 MATRIX; (D) A RECOMMENDED 10% ADVANCE PAYMENT FOR
ALL DAILY HARVEST CRUMBLES CATEGORY 2 THROUGH 4 CLAIMANTS NOT
TAKING INTO ACCOUNT ANY CATEGORY 5 AWARD THEY MAY RECEIVE IN
THE FUTURE; (E) SUGGESTED PROCEDURES FOR PAYING CLAIMS CLEARED OF
LIENS; AND (F) SUGGESTED PROCEDURE FOR PAYING AWARDS FOR THE
BENEFIT OF MINOR CLAIMANTS**

Upon the Motion of the Settlement Administrator, not opposed by the Parties, this Court issues the following Order approving the Settlement Administrator’s Recommendations.

(A) The Category 1, 2, 3 and 4 award values and the amount available for Category 5 set forth in part A of the Settlement Administrator’s Report and Recommendation is hereby approved.

(B) The application of interest earned to date in the Daily Harvest Settlement made to awards as described in part B of the Settlement Administrator’s Report and Recommendation is hereby approved.

(C) The Category 5 extraordinary damages, Extraordinary Injury Matrix, and recommended procedures described in part C of the Settlement Administrator's Report and Recommendation is hereby approved.

(D) The recommended 10% advance payment for Category 2 through 4 claimants described in part D of the Settlement Administrator's Report and Recommendation is hereby approved.

(E) The recommended procedures for paying claimants described in part E of the Settlement Administrator's Report and Recommendation, after cleared of liens, and which provide for indemnification of the Settlement Administrator and the Settlement is hereby approved.

(F) The recommended procedure in Part F of the Settlement Administrator's Report and Recommendation with respect to payments for the benefit of minor claimants is hereby approved.

IT IS SO ORDERED.

Dated: _____

THE HONORABLE DENISE COTE
UNITED STATES DISTRICT JUDGE

Exhibit A

(REDACTED)

De-Identified Table and Bar Diagram of Category 5 Enhancement Points Awarded

(submitted in camera with the Court and will be provided to each Category 5 claimant on a confidential basis in order to satisfy the ABA Rule 1.8(g) “Informed Consent” standard)

[illegible]

Cat 5 De-Identified & Randomized Claimant Number	Enhancement #1	Enhancement #2	Enhancement #3	Enhancement #4	Enhancement #5	Enhancement #6	Enhancement #7	Enhancement #8	Enhancement #9	Enhancement #10	Enhancement #11	Enhancement #12	Enhancement #13	TOTAL ENHANCEMENT POINTS AWARDED
	Emotional/Mental Distress - Severity of Symptoms Above Average	Emergency Room Visit	Days Admitted to Hospital	Additional Treatment/Testing	Invasive Procedure: Peripherally Inserted Central Catheter (PICC)	Invasive Procedure: Esophagogastroduodenoscopy (EGD)	Invasive Procedure: Colonoscopy	Invasive Procedure: Liver Biopsy	Invasive Procedure: Feeding Tube	Invasive Procedure: Endoscopic Retrograde Cholangiopancreatogram (ERCP)	Pregnant, Breastfeeding, or In Vitro Fertilization (IVF) at Consumption	Age at Consumption: Under 18 or 65 and Older	Causally Related Miscarriage	
	1 POINT	1 POINT PER VISIT	2 POINTS PER VISIT	3 POINTS	3 POINTS	4 POINTS	5 POINTS	5 POINTS	6 POINTS	7 POINTS	7 POINTS	10 POINTS	15 POINTS	
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Cat 5 De-Identified & Randomized Claimant Number	Enhancement #1	Enhancement #2	Enhancement #3	Enhancement #4	Enhancement #5	Enhancement #6	Enhancement #7	Enhancement #8	Enhancement #9	Enhancement #10	Enhancement #11	Enhancement #12	Enhancement #13	TOTAL ENHANCEMENT POINTS AWARDED
	Emotional/Mental Distress - Severity of Symptoms Above Average	Emergency Room Visit	Days Admitted to Hospital	Additional Treatment/Testing	Invasive Procedure: Peripherally Inserted Central Catheter (PICC)	Invasive Procedure: Esophagogastroduodenoscopy (EGD)	Invasive Procedure: Colonoscopy	Invasive Procedure: Liver Biopsy	Invasive Procedure: Feeding Tube	Invasive Procedure: Endoscopic Retrograde Cholangiopancreatogram (ERCP)	Pregnant, Breastfeeding, or In Vitro Fertilization (IVF) at Consumption	Age at Consumption: Under 18 or 65 and Older	Causally Related Miscarriage	
	1 POINT	1 POINT PER VISIT	2 POINTS PER VISIT	3 POINTS	3 POINTS	4 POINTS	5 POINTS	5 POINTS	6 POINTS	7 POINTS	7 POINTS	10 POINTS	15 POINTS	
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71														
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Cat 5 De-Identified & Randomized Claimant Number	Enhancement #1	Enhancement #2	Enhancement #3	Enhancement #4	Enhancement #5	Enhancement #6	Enhancement #7	Enhancement #8	Enhancement #9	Enhancement #10	Enhancement #11	Enhancement #12	Enhancement #13	TOTAL ENHANCEMENT POINTS AWARDED
	Emotional/Mental Distress - Severity of Symptoms Above Average	Emergency Room Visit	Days Admitted to Hospital	Additional Treatment/Testing	Invasive Procedure: Peripherally Inserted Central Catheter (PICC)	Invasive Procedure: Esophagogastroduodenoscopy (EGD)	Invasive Procedure: Colonoscopy	Invasive Procedure: Liver Biopsy	Invasive Procedure: Feeding Tube	Invasive Procedure: Endoscopic Retrograde Cholangiopancreatogram (ERCP)	Pregnant, Breastfeeding, or In Vitro Fertilization (IVF) at Consumption	Age at Consumption: Under 18 or 65 and Older	Causally Related Miscarriage	
	1 POINT	1 POINT PER VISIT	2 POINTS PER VISIT	3 POINTS	3 POINTS	4 POINTS	5 POINTS	5 POINTS	6 POINTS	7 POINTS	7 POINTS	10 POINTS	15 POINTS	
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Cat 5 De-Identified & Randomized Claimant Number	Enhancement #1	Enhancement #2	Enhancement #3	Enhancement #4	Enhancement #5	Enhancement #6	Enhancement #7	Enhancement #8	Enhancement #9	Enhancement #10	Enhancement #11	Enhancement #12	Enhancement #13	TOTAL ENHANCEMENT POINTS AWARDED
	Emotional/Mental Distress - Severity of Symptoms Above Average	Emergency Room Visit	Days Admitted to Hospital	Additional Treatment/Testing	Invasive Procedure: Peripherally Inserted Central Catheter (PICC)	Invasive Procedure: Esophagogastroduodenoscopy (EGD)	Invasive Procedure: Colonoscopy	Invasive Procedure: Liver Biopsy	Invasive Procedure: Feeding Tube	Invasive Procedure: Endoscopic Retrograde Cholangiopancreatogram (ERCP)	Pregnant, Breastfeeding, or In Vitro Fertilization (IVF) at Consumption	Age at Consumption: Under 18 or 65 and Older	Causally Related Miscarriage	
	1 POINT	1 POINT PER VISIT	2 POINTS PER VISIT	3 POINTS	3 POINTS	4 POINTS	5 POINTS	5 POINTS	6 POINTS	7 POINTS	7 POINTS	10 POINTS	15 POINTS	
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188														
190														
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Cat 5 De-Identified & Randomized Claimant Number	Enhancement #1 Emotional/Mental Distress - Severity of Symptoms Above Average 1 POINT	Enhancement #2 Emergency Room Visit 1 POINT PER VISIT	Enhancement #3 Days Admitted to Hospital 2 POINTS PER VISIT	Enhancement #4 Additional Treatment/Testing 3 POINTS	Enhancement #5 Invasive Procedure: Peripherally Inserted Central Catheter (PICC) 3 POINTS	Enhancement #6 Invasive Procedure: Esophagogastroduodenoscopy (EGD) 4 POINTS	Enhancement #7 Invasive Procedure: Colonoscopy 5 POINTS	Enhancement #8 Invasive Procedure: Liver Biopsy 5 POINTS	Enhancement #9 Invasive Procedure: Feeding Tube 6 POINTS	Enhancement #10 Invasive Procedure: Endoscopic Retrograde Cholangiopancreatogram (ERCP) 7 POINTS	Enhancement #11 Pregnant, Breastfeeding, or In Vitro Fertilization (IVF) at Consumption 7 POINTS	Enhancement #12 Age at Consumption: Under 18 or 65 and Older 10 POINTS	Enhancement #13 Causally Related Miscarriage 15 POINTS	TOTAL ENHANCEMENT POINTS AWARDED
403	■	■	■	■	■	■	■	■	■	■	■	■	■	■
TOTAL CLAIMANTS	532													
POINT TOTALS	Enhancement #1 532	Enhancement #2	Enhancement #3	Enhancement #4	Enhancement #5	Enhancement #6	Enhancement #7	Enhancement #8	Enhancement #9	Enhancement #10	Enhancement #11	Enhancement #12	Enhancement #13	TOTAL POINTS

