

# **EXHIBIT 2**

**IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF MISSOURI  
WESTERN DIVISION**

AMANDA SMITH, individually and on )  
behalf of all others similarly situated, )

Plaintiff, )

v. )

Case No. 2:18-CV-04004-MDH

ATKINS NUTRITIONALS, INC., )

Defendant. )

**AFFIDAVIT OF LINDA ZINK**

I, Linda Zink, pursuant to 28 U.S.C. § 1746, hereby declare and state as follows:

1. I am an adult over the age of 18 and am a resident of the State of Colorado. I have personal knowledge of all matters set forth herein and would testify thereto if called as a witness in this matter.

2. I am the Senior Vice President of Innovation & Product Marketing for Defendant Atkins Nutritionals, Inc. (“ANI”). I have held this position since October of 2017. Previously, I served as Chief Insights Officer for ANI.

3. I submit this affidavit in support of, and in accordance with, Paragraph VIII.B.1 of the Stipulation of Class Action Settlement (the “Settlement Agreement”) reached in the above-captioned lawsuit.

4. I am familiar with ANI’s product development, manufacturing, marketing, advertising, sales, and financial strategies and operations. I have also reviewed and am familiar with the Injunctive Relief ANI has agreed to provide as part of the Settlement Agreement, including the relabeling, reformulating, discontinuing and not reintroducing various ANI statements, products and ingredients.

5. As set forth in this Affidavit, there are substantial costs to ANI associated with relabeling, reformulating, discontinuing and not reintroducing these ANI statements, products and ingredients.

6. With respect to reformulation of its products, ANI incurs expenses associated with the research and development of the alternative formulations, including the cost of personnel such as food scientists and regulatory advisors devoted to such efforts, the costs of replacement ingredients to make prototypes using alternative formulations (which are more expensive than the ingredient being replaced, maltitol), production plant trials to ensure that reformulated products can be run on the production line, lost yield associated with such plant trials (*i.e.*, the inability to produce other products during the times when new product formulations are being tested), and particularized consumer and market research to validate the reformulated products with consumers.

7. I am familiar with ANI's efforts and the associated costs to discontinue the use of maltitol in and to reformulate the nine (9) products referenced in the Settlement Agreement.<sup>1</sup> Based on that familiarity, I also am able to estimate the additional work and associated costs to ANI of discontinuing or reducing the amount of maltitol in two (2) additional products over the next two years as required by the Settlement Agreement.<sup>2</sup>

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<sup>1</sup> These products are: Chocolate Chip Granola Meal Bar; Chocolate Peanut Butter Meal Bar; Peanut Butter Granola Meal Bar; Blueberry Greek Yogurt Bar; Chocolate Peanut Butter Pretzel; Triple Chocolate Snack Bar; Caramel Double Chocolate Crunch Snack Bar; Chocolate Chip Crisp Snack Bar; and Cranberry Almond Snack Bar (collectively, these nine (9) products are the "Reformulated Products").

<sup>2</sup> These products are: Caramel Nut Roll Snack Bar and Caramel Chocolate Peanut Nougat Snack Bar.

8. Based on my familiarity described above, and a review of the costs associated with ANI's reformulation efforts, I estimate that ANI will incur, in total, at least \$832,500.00 in connection with the reformulation efforts specified in the Settlement Agreement.

9. Changes to product composition—*e.g.*, reformulating products to remove maltitol as an ingredient—also necessitate relabeling, and such relabeling efforts also are costly, as they require the input of external design consultants and the creation of new press plates to manufacture the revised labels.

10. Based on my familiarity with these costs and review of records, I estimate that ANI will incur costs, in total, of at least \$100,000.00 in connection with its relabeling efforts necessitated by the reformulations specified in the Settlement Agreement and by ANI's agreement to remove the statement that sugar alcohols "minimally impact blood sugar" from the packaging and labeling of all Subject Products (as defined in the Settlement Agreement) manufactured more than one (1) year after the Preliminary Approval Order.

11. Changes to product formulations and labels also necessitate, for consistency, changes to ANI's website and advertising materials. Similarly, ANI must train and educate its employees to ensure continued compliance and consistency with the requirements of the Settlement Agreement, such as not using in marketing, advertising, or other communications the statements that the lawsuit challenged as misleading and which ANI agreed to remove from product its packaging. I estimate that ANI will incur costs of at least \$15,000.00 in connection with these additional compliance efforts.

12. Moreover, I estimate that ANI will incur, in total, at least \$375,000.00 in costs associated with the reformulating and relabeling efforts described above and required by the Settlement Agreement as they relate to the time and attention dedicated by ANI executives,

marketing resources, and legal counsel to oversee and facilitate these efforts, including time working with ANI's research and development teams, testing samples, reworking nutrition labels and label claims, and conducting additional scientific and marketing research.

13. In addition to the reformulation and relabeling efforts described above, ANI has also agreed to discontinue five (5) products containing maltitol within one year of the Effective Date of the Settlement Agreement, in addition to the seven (7) products containing maltitol that it has already discontinued, and has committed to not re-introducing any of these twelve (12) products for at least two (2) years after the Effective Date.<sup>3</sup> Based on the most recent sales data available for these products, ANI's annual sales associated with these products combined totaled \$14,444,000.00.

14. Based on market research conducted and obtained by ANI, when ANI discontinues a product, some consumers replace their previous purchases of the discontinued products with purchases of other existing or new ANI products, while others replace their purchases of the discontinued products with purchases of competitors' products, while others do not replace their purchases at all. Based on this research, it is typically projected that 1/3 to 2/3 of purchasers will replace their purchases of discontinued ANI products with other ANI products.

15. Even if generously assuming that 2/3 of the purchases associated with the discontinued ANI products described herein are replaced with purchases of other ANI products, the required discontinuation of the products specified in the Settlement Agreement for two years

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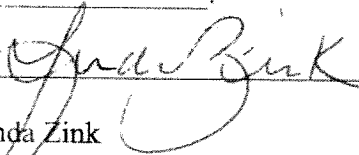
<sup>3</sup> These products that have been or are to be discontinued and not reintroduced are: Dark Chocolate Almond Delight Snack Bar; Dark Chocolate Decadence Bar; Classic Trail Mix; Marshmallow Mudslide Bar; Cinnamon Bun Meal Bar; Strawberry Almond Meal Bar; Chocolate Oatmeal Fiber Bar; Chocolate Hazelnut Snack; Sweet and Salty Trail Mix; Coconut Almond Delight; Dark Chocolate Almond Coconut Crunch; and Cashew Trail Mix.

following the Execution Date of the Agreement represents a loss of approximately \$4,766,500.00 in annual sales, or approximately \$1,559,000.00 in annual net profit, to ANI. In other words, ANI will lose approximately \$3,117,000.00 in profits over those two years by not being able to sell those discontinued products.

16. Thus, the total costs to ANI of relabeling, reformulating, discontinuing, and not reintroducing the statements, ingredients and products as required by the Settlement Agreement will be approximately \$4,439,500.00.

I declare under penalty of perjury under 28 U.S.C. § 1746 that the foregoing is true and correct.

Executed on November 16, 2019 in 2019

  
Linda Zink