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12 **UNITED STATES DISTRICT COURT**
13 **CENTRAL DISTRICT OF CALIFORNIA**

14 JEFFREY N. SCHNEIDER,
15 Individually and On Behalf of All
16 Others Similarly Situated,

17 Plaintiff,

18 v.

19 CHAMPIGNON BRANDS INC.,
20 GARETH BIRDSALL, and
21 MATTHEW FISH,

22 Defendants.

Case No. 2:21-cv-03120-JVS-KES

**PLAINTIFF'S RESPONSE TO
COURT'S ORDER REGARDING
ADDITIONAL BRIEFING ON
CLASS DEFINITION (ECF No. 66)**

Date: June 13, 2022

Time: 1:30 p.m.

Crtm: 10C

Judge: James V. Selna

1 Lead Plaintiff Michael G. Quinn (“Plaintiff”), through his undersigned counsel,
 2 submits this supplemental briefing pursuant to the Court’s May 2, 2022 Order (the
 3 “Order”). ECF No. 66. Specifically, the Order requested the parties to file
 4 supplemental briefing regarding whether the Court is empowered to grant class relief
 5 with respect to all transactions on the OTC Market. *Id.* (citing *Morrison v. Nat’l*
 6 *Australia Bank Ltd.*, 561 U.S. 247 (2010)). As discussed herein, the Court is
 7 empowered to grant such relief to the Settlement Class.

8 **I. DOMESTICITY, AS AN ELEMENT OF A § 10(b) VIOLATION, CAN**
 9 **AND HAS BEEN WAIVED BY DEFENDANTS FOR SETTLEMENT**
 10 **PURPOSES**

11 The Supreme Court has made clear that domesticity is an element of a violation
 12 under the Securities Exchange Act of 1934, *not* a question of Article III standing.
 13 *Morrison*, 561 U.S. at 254 (“to ask what conduct § 10(b) reaches is to ask what
 14 conduct § 10(b) prohibits, which is a merits question”). Subsequent courts have
 15 confirmed that while “domesticity must be proven by plaintiffs as part of their case-
 16 in-chief,” the requirement can be waived by defendants for the purposes of settlement.
 17 *See e.g., In re Petrobras Sec. Litig.*, 317 F. Supp. 3d 858, 866 (S.D.N.Y. 2018), *aff’d*,
 784 F. App’x 10 (2d Cir. 2019).

18 Here, by entering the Settlement, Defendants have waived the requirement that
 19 Plaintiff prove the element of domesticity under *Morrison*. Thus, the domesticity
 20 requirement does not prohibit preliminary approval of the proposed class action
 21 settlement. *See e.g., Hashem v. NMC Health plc, et al.*, Case No. 2:20-cv-2303 (C.D.
 22 Cal.), ECF No. 102 (complaint against foreign company whose securities trade on the
 23 OTC market); *id.* at ECF No. 113 (granting final approval of settlement and entering
 24 partial final judgment); *see also Sullivan v. DB Invs., Inc.*, 667 F.3d 273, 310-11 (3d
 25 Cir. 2011) (holding that assessing the merits of settled claims “would effectively rule
 26 out the ability of a defendant to achieve ‘global peace’ by obtaining releases from all
 27 those who might wish to assert claims, meritorious or not”).
 28

1 **II. THE SETTLEMENT CLASS CONCERNS DOMESTIC** 2 **TRANSACTIONS, SATISFYING *MORRISON***

3 If the Court were required to determine whether the Securities Exchange Act
4 of 1934 applies to Defendants prior to approving the Settlement (it is not), the
5 transactions at issue are “domestic transactions in other securities,” satisfying
6 *Morrison*. 561 U.S. at 269-70 (adopting “transactional test” as to “whether the
7 purchase or sale is made in the United States”). The test focuses squarely on where
8 “the purchaser incurred irrevocable liability . . . to take and pay for the securities.”
9 *Stoyas v. Toshiba Corp.*, 896 F.3d 933, 948 (9th Cir. 2018) (quoting *Absolute Activist*
10 *Value Master Fund Ltd. v. Ficeto*, 677 F.3d 60, 67-68 (2d Cir. 2012)); *see also*
11 *Absolute Activist*, 677 F.3d at 68 (“[T]he point at which the parties become
12 irrevocably bound . . . can be used to determine the locus of a securities purchase or
13 sale.”). In the classic contractual sense, “irrevocable liability” attaches once the
14 transaction is fully executed and the parties have committed to perform their
15 obligations under the agreement. *Giunta v. Dingman*, 893 F.3d 73, 79 (2d Cir. 2018)
16 (citation and quotation marks omitted). Relevant facts concern “the formation of the
17 contracts, the placement of purchase orders, the passing of title, or the exchange of
18 money.” *Stoyas*, 896 F.3d at 948.

19 Here, at all times relevant, Plaintiff was a resident of the United States. Further,
20 Plaintiff engaged two brokerage firms located in the United States to purchase shares
21 of Braxia on the OTC Market, and, according to Plaintiff’s trade confirmations, it
22 appears that these transactions in fact occurred through those same United States
23 brokerage firms. Based on these facts, it can be inferred that Plaintiff incurred
24 irrevocable liability to take and pay for the Braxia shares in the United States.

25 **III. CONCLUSION**

26 For the reasons stated above and for the reasons outlined in Plaintiff’s
27 preliminary approval motion (*see* ECF Nos. 64-65), Plaintiff respectfully requests that
28

1 the Court preliminarily approve the proposed class action settlement and authorize
2 Lead Counsel to provide notice to the Settlement Class.

3 DATED: May 10, 2022

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13 *Class*
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PROOF OF SERVICE BY ELECTRONIC POSTING

I, the undersigned, say:

I am not a party to the above case and am over eighteen years old. On May 10, 2022, I served true and correct copies of the foregoing document, by posting the document electronically to the ECF website of the United States District Court for the Central District of California, for receipt electronically by the parties listed on the Court's Service List.

I affirm under the penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on May 10, 2022, at Los Angeles, California.

/s/ Casey E. Sadler
Casey E. Sadler