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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

RICHARD W. TRAMMELL,
Plaintiff,
v.
BARBARA'S BAKERY, INC., *et al.*,
Defendants.

Case No. 3:12-cv-02664-CRB

**[REDACTED] ORDER PRELIMINARILY
CERTIFYING A CLASS FOR SETTLEMENT
PURPOSES, PRELIMINARILY APPROVING
THE CLASS SETTLEMENT, APPOINTING
CLASS COUNSEL, DIRECTING ISSUANCE OF
NOTICE TO THE CLASS, SCHEDULING A
FAIRNESS HEARING, AND ISSUING RELATED
ORDERS**

Honorable Charles R. Breyer, Presiding

1 WHEREAS:

2 This motion was brought before the Court by Plaintiff Richard W. Trammell (“Plaintiff”);
3 *Trammell v. Barbara’s Bakery, Inc.*, No. 3:12-cv-02664-CRB, originally was filed on May 23,
4 2012 in the United States District Court for the Northern District of California (the “Action”);

5 The Action alleges, on behalf of a nationwide class of consumers, that Barbara’s Bakery
6 violated California’s Unfair Competition Law (“UCL”), Bus. & Prof. Code §17200, *et seq.*, False
7 Advertising Law (“FAL”), Bus. & Prof. Code §17500, *et seq.*, Consumers Legal Remedies Act
8 (“CLRA”), Civ. Code §1770, *et seq.*, and breached an express warranty;

9 A first amended complaint was filed on June 28, 2012, and a second amended complaint was
10 filed on January 30, 2013. The amended complaints allege causes of action identical to the original
11 complaint, and re-alleged Barbara’s Bakery’s, Inc.’s (“Barbara’s Bakery”) violations of California’s
12 consumer protection laws;

13 Barbara’s Bakery filed an answer to the first amended complaint on July 19, 2012, in which it
14 expressly denied any and all wrongdoing alleged in the action, and neither admitted nor conceded any
15 actual or potential fault, wrongdoing, or liability in connection with any facts or claims that have been
16 or could have been alleged against it in this action. Barbara’s Bakery filed an answer to the second
17 amended complaint on February 5, 2013, which was substantively identical to the original answer;

18 Class Counsel has conducted a thorough examination, investigation, and evaluation of the
19 relevant law, facts, and allegations to assess the merits of the claims and potential claims to determine
20 the strength of both defenses and liability sought in the Action;

21 Class Counsel, on behalf of Plaintiff and the other members of the Class, engaged in extensive
22 discovery. In particular, Barbara’s Bakery has produced the following documentation regarding the
23 Eligible Products: (i) label design and product formulation; (ii) marketing, advertising, media, and
24 public relations; and (iii) financial information. In total, Plaintiff’s Counsel was given access to over
25 thirty (30) banker’s boxes of documents and approximately seventy (70) Gigabytes (GB) of data.
26 Class Counsel also conducted interviews of primary Barbara’s Bakery’s corporate witnesses who have
27 been involved with the Eligible Products to address the following subjects: (i) sales and marketing; (ii)
28 labeling; (iii) finance; (iv) document collection and retention; and (v) Barbara’s Bakery’s efforts to

1 eliminate GMO ingredients from its products. Before entering into this Settlement Agreement, Class
2 Counsel conducted a thorough examination and evaluation of the relevant law, facts, and allegations to
3 assess the merits of the claims and could reasonably assess the strength of Plaintiff's claims and
4 Barbara's Bakery's liability, including its defenses; and

5 The Parties having entered into a Settlement Agreement in which the Parties have agreed to
6 settle the Action, pursuant to the terms of the Settlement Agreement, subject to the approval and
7 determination of the Court as to the fairness, reasonableness, and adequacy of the Settlement which, if
8 approved, will result in dismissal of the Action with prejudice; and The Court having reviewed the
9 Settlement Agreement, including the exhibits attached thereto (together, the "Settlement Agreement"),
10 and all prior proceedings herein, and good cause appearing based on the record;

11 THEREFORE, IT IS **ORDERED, ADJUDGED, AND DECREED** as follows (all capitalized
12 terms being defined as they are defined in the Settlement Agreement unless otherwise specified or
13 defined herein):

14 1. **Stay of the Action.** All non-settlement-related proceedings in the Action are hereby
15 stayed and suspended until further order of this Court.

16 2. **Preliminary Class Certification for Settlement Purposes Only.** The Action is
17 preliminarily certified as a class action for settlement purposes only, pursuant to Fed. R. Civ. P. 23(a)
18 and (b)(3). The Court preliminarily finds for settlement purposes that: (a) the Class certified herein is
19 numerous, and that joinder of all such persons would be impracticable, (b) there are issues of law and
20 fact that are typical and common to the Class, and that those issues predominate over individual
21 questions; (c) a class action on behalf of the certified Class is superior to other available means of
22 adjudicating this dispute; and (d) as set forth in paragraph 4, below, Plaintiff and Class Counsel are
23 adequate representatives of the Class. Barbara's Bakery retains all rights to assert that this action may
24 not be certified as a class action, other than for settlement purposes.

25 3. **Class Definition.** The Class shall consist of all persons who, during the Class Period,
26 purchased in the United States any Eligible Products. Excluded from the Class are: (a) Barbara's
27 Bakery's board members or executive-level officers, including its attorneys; (b) persons who
28 purchased the Eligible Products primarily for the purpose of resale; (c) retailers or re-sellers of the

1 Eligible Products; (d) governmental entities; (e) persons who timely and properly exclude themselves
2 from the Class as provided in the Agreement; (f) persons who purchased the Eligible Products via the
3 Internet or other remote means while not residing in the United States; and (g) the Court, the Court's
4 immediate family, and Court staff.

5 "Class Period" means the period from May 23, 2008, up to and including the date of the first
6 dissemination of the Summary Settlement Notice or Class Notice, whichever is earlier

7 "Eligible Products" means any of the following Barbara's Bakery products purchased by Class
8 Members during the Class Period:

9 **A. Cereals:**

- 10 i. BROWN RICE CRISPS (Fruit Juice Sweetened flavor);
- 11 ii. CORN FLAKES (Fruit Juice Sweetened flavor);
- 12 iii. HIGH FIBER (Cranberry, Flax & Granola, or Original flavors);
- 13 iv. HOLE 'N OATS (Fruit Juice Sweetened or Honey Nut flavors);
- 14 v. HONEST O'S (Honey Nut, Multigrain, or Original flavors);
- 15 vi. ORGANIC APPLE CINNAMON O'S;
- 16 vii. ORGANIC BREAKFAST O'S;
- 17 viii. ORGANIC BROWN RICE;
- 18 ix. ORGANIC BROWN RICE CRISPS;
- 19 x. ORGANIC CORN FLAKES;
- 20 xi. ORGANIC CRISPY WHEATS;
- 21 xii. ORGANIC HONEY CRUNCH 'N OATS;
- 22 xiii. ORGANIC HONEY NUT O'S;
- 23 xiv. ORGANIC SNACKIMALS CEREAL (Cinnamon Crunch or Vanilla Blast flavors);
- 24 xv. ORGANIC WILD PUFFS (Caramel, Cocoa, Cocoa Grahams, Fruity Punch, Honey
25 Puffs, or Original flavors);
- 26 xvi. PUFFINS (Cinnamon, Crunchy Cocoa, Fruit Medley, Honey Rice, Multigrain,
27 Peanut Butter, Peanut Butter & Chocolate, or Original flavors);
- 28 xvii. PUFFIN PUFFS (Crunchy Cocoa or Fruit Medley flavors);

- 1 xviii. SHREDDED OATS (Cinnamon Crunch, Blueberry Burst, Multigrain, Original,
2 Shredded Wheat, or Vanilla Almond flavors);
3 xix. SHREDDED WHEAT;
4 xx. SHREDDED SPOONFULS (Multigrain or Vanilla Blast flavors);
5 xxi. SHREDDED MINIS (Blueberry Burst flavor);
6 xxii. TOASTED OATMEAL FLAKES (Original flavor); and
7 xxiii. ULTIMA ORGANIC (Blue Corn, Blueberry, Flax & Granola, High Fiber, or
8 Pomegranate flavors).

9 **B. Cereal Bars:**

- 10 i. MULTIGRAIN CEREAL BARS (Apple Cinnamon, Blueberry, Cherry, Original,
11 Raspberry, Strawberry, or Triple Berry flavors);
12 ii. FRUIT & YOGURT BARS (Apple Cinnamon, Blueberry Apple, Cherry Apple,
13 Strawberry Apple, or Traditional flavors); and
14 iii. PUFFINS CEREAL AND MILK BARS (Blueberry Yogurt, French Toast, Peanut
15 Butter Chocolate Chip, or Strawberry Yogurt flavors).

16 **C. Cheese Puffs:**

- 17 i. BAKED CHEESE PUFFS (Original or White Cheddar flavors); and
18 ii. CHEESE PUFFS (Jalapeno or Original flavors).

19 **D. Fig Bars:**

- 20 i. FIG BARS (Apple Cinnamon, Blueberry, Multigrain, Raspberry, Traditional,
21 Wheat Free, or Whole Wheat flavors).

22 **E. Granola Bars:**

- 23 i. CRUNCHY ORGANIC GRANOLA BARS (Cinnamon Crisp, Oat & Honey, Peanut
24 Butter, or Toasted Almond flavors).

25 **F. Snackimals Animal Cookies:**

- 26 i. SNACKIMALS ANIMAL COOKIES (Chocolate Chip, Double Chocolate, Peanut
27 Butter, Oatmeal, Vanilla, or Snickerdoodle flavors).
28

1 G. **Organic Mini-Cookies:**

- 2 i. ORGANIC MINI COOKIES (Chocolate, Ginger, or Oatmeal flavors).

3 H. **Snack Mixes:**

- 4 i. BRUSCHETTA SNACK MIX;
5 ii. HONEY CINNAMON SNACK MIX;
6 iii. HONEY MUSTARD SNACK MIX; and
7 iv. SALSA SNACK MIX.

8 I. **Crackers:**

- 9 i. CRISP COOKIES (Chocolate Chip, Double Dutch Chocolate Chip, Old Fashioned
10 Oatmeal, or Traditional Short Bread);
11 ii. GO GO GRAHAMS (Chocolate, Cinnamon, Honey, or Lemon Ginger);
12 iii. PIZZA AND CHEESE BITES;
13 iv. RITE LITE ROUNDS (Original, Poppy Seed, or Tamari Sesame flavors); and
14 v. WHEATINES (Cracked Pepper, Original, or Sesame flavors).

15 4. **Class Representatives and Class Counsel.** Plaintiff, Richard W. Trammell, is
16 designated as the representative of the conditionally certified Class. The Court preliminarily finds that
17 he is similarly situated to absent Class Members and therefore typical of the Class, and that he will be
18 an adequate Class Representative. Tina Wolfson and Robert Ahdoot of Ahdoot & Wolfson, PC,
19 whom the Court finds are experienced and adequate counsel, are hereby designated as Class Counsel.

20 5. **Preliminary Settlement Approval.** Upon preliminary review, the Court finds that the
21 Settlement Agreement, and the Settlement it incorporates, appears fair, reasonable, and adequate. Fed.
22 R. Civ. P. 23(e); Manual for Complex Litigation (Fourth) § 21.632 (2004). Accordingly, the
23 Settlement Agreement is preliminarily approved and is sufficient to warrant sending notice to the
24 Class.

25 6. **Jurisdiction.** The Court has subject-matter jurisdiction over the Action pursuant to 28
26 U.S.C. §§ 1332 and 1367, and personal jurisdiction over the Parties before it. Additionally, venue is
27 proper in this District pursuant to 28 U.S.C. § 1391.
28

1 7. **Fairness Hearing.** A Fairness Hearing shall be held on November 8, 2013 at 10:00
2 A.M. at the United States District Court for the Northern District of California, 450 Golden Gate
3 Avenue, 17th Floor, Courtroom 6, San Francisco, California, 94102, to determine, among other things:
4 (a) whether the Action should be finally certified as a class action for settlement purposes pursuant to
5 Fed. R. Civ. P. 23(a) and (b)(3); (b) whether the settlement of the Action should be approved as fair,
6 reasonable and adequate, and finally approved pursuant to Fed. R. Civ. P. 23(e); (c) whether the
7 Action should be dismissed with prejudice pursuant to the terms of the Settlement Agreement; (d)
8 whether Class Members should be bound by the release set forth in the Settlement Agreement; (e)
9 whether Class Members and related persons should be subject to a permanent injunction; (f) whether
10 the application of Class Counsel for an award of Attorneys' Fees and Expenses should be approved
11 pursuant to Fed. R. Civ. P. 23(h); and (g) whether the application of the named Plaintiff for an
12 incentive award should be approved. The submissions of the Parties in support of the settlement,
13 including Plaintiff's Counsel's application for Attorneys' Fees and Expenses and incentive awards,
14 shall be filed with the Court no later than fourteen (14) days prior to the deadline for the submission of
15 objections and may be supplemented up to seven (7) days prior to the Fairness Hearing.

16 8. **Administration.** In consultation with and with the approval of Barbara's Bakery,
17 Class Counsel is hereby authorized to establish the means necessary to administer the proposed
18 settlement and implement the Claim Process, in accordance with the terms of the Agreement.

19 9. **Class Notice.** The proposed Class Notice, Summary Settlement Notice, the notice
20 methodology described in the Settlement Agreement, and the Declaration of the Media Notice
21 Administrator are hereby approved.

22 a. Pursuant to the Settlement Agreement, the Court appoints Kinsella Media, LLC
23 to be the Notice Administrator and Rust Consulting, Inc. to be the Settlement Administrator to help
24 implement the terms of the Settlement Agreement.

25 b. Beginning not later than ten (10) calendar days after entry of the Preliminary
26 Approval Order and to be substantially completed not later than twenty-five (25) calendar days after
27 entry of the Preliminary Approval Order and subject to the requirements of the Preliminary Approval
28 Order, the Settlement Agreement, and the Declaration of the Notice Administrator, the Notice

1 Administrator shall commence sending the Class Notice by Electronic Mail (“E-mail) to: (i) each
2 reasonably identifiable Class Member’s last known E-mail address, reasonably obtainable from
3 Barbara’s Bakery, which addresses shall be provided to the Notice Administrator by Barbara’s Bakery,
4 no later than one (1) business day after the day of entry of the Preliminary Approval Order, subject to
5 the existence of such information; and (ii) each appropriate State and Federal official, as specified in
6 28 U.S.C. §1715, and shall otherwise comply with Fed. R. Civ. P. 23 and any other applicable statute,
7 law, or rule, including but not limited to the Due Process Clause of the United States Constitution.

8 c. The Notice Administrator shall have the publication of the Summary Settlement
9 Notice substantially completed no later than ninety (90) calendar days after entry of this Preliminary
10 Approval Order. The Notice Administrator shall publish the Summary Settlement Notice as described
11 in the Declaration of the Notice Administrator and in such additional newspapers, magazines, and/or
12 other media outlets as shall be agreed upon by the Parties.

13 d. No later than forty-five (45) calendar days after entry of the Preliminary
14 Approval Order, the Notice Administrator shall send the Summary Settlement Notice by First Class
15 U.S. Mail, proper postage prepaid, to each Class Member whose E-mail address returned a message as
16 undeliverable, subject to the existence of such information as provided by Barbara’s Bakery pursuant
17 to Section IV.B.1.a of this Agreement. The Notice Administrator shall: (a) re-mail any Summary
18 Settlement Notices returned by the United States Postal Service with a forwarding address that are
19 received by the Notice Administrator no later than sixty (60) calendar days after entry of the
20 Preliminary Approval Order; and (b) by itself or using one or more address research firms, as soon as
21 practicable following receipt of any returned Summary Settlement Notices that do not include a
22 forwarding address, research any such returned mail for better addresses and promptly mail copies of
23 the Summary Settlement Notices to the better addresses so found.

24 e. Prior to the dissemination of the Class Notice as set forth above in paragraphs
25 9(a) to 9(d), the Notice Administrator shall establish an Internet website,
26 www.BarbarasBakerySettlement.com, that will inform Class Members of the terms of this Agreement,
27 their rights, dates and deadlines, and related information. The web site shall include, in .pdf format,
28 materials agreed upon by the Parties and as further ordered by this Court.

1 f. Prior to the dissemination of the Class Notice as set forth above in paragraphs
2 9(a) to 9(d), the Notice Administrator shall establish a toll-free telephone number that will provide
3 Settlement-related information to Class Members.

4 g. The Notice Administrator shall timely disseminate any remaining notice, as
5 stated in the Settlement Agreement and/or the Declaration of the Notice Administrator.

6 h. Not later than ten (10) calendar days before the date of the Fairness Hearing, the
7 Notice Administrator and/or Settlement Administrator shall file with the Court: (a) a list of those
8 persons who have opted out or excluded themselves from the Settlement; and (b) the details outlining
9 the scope, methods, and results of the notice program.

10 10. **Findings Concerning Notice.** The Court finds that the form, content, and method of
11 giving notice to the Class as described in Paragraph 9 of this order: (a) will constitute the best
12 practicable notice; (b) are reasonably calculated, under the circumstances, to apprise the Class
13 Members of the pendency of the Action, the terms of the proposed settlement, and their rights under
14 the proposed settlement, including but not limited to their rights to object to or exclude themselves
15 from the proposed settlement and other rights under the terms of the Settlement Agreement; (c) are
16 reasonable and constitute due, adequate, and sufficient notice to all Class Members and other persons
17 entitled to receive notice; and (d) meet all applicable requirements of law, including but not limited to
18 28 U.S.C. § 1715, Fed. R. Civ. P. 23(c) and (e), and the Due Process Clause(s) of the United States
19 Constitution. The Court further finds that all of the notices are written in simple terminology, are
20 readily understandable by Class Members, and comply with the Federal Judicial Center's illustrative
21 class action notices.

22 11. **Exclusion from Class.** Any Class Member who wishes to be excluded from the Class
23 must mail a personally signed, written request for exclusion to the Settlement Administrator at the
24 address provided in the Class Notice, postmarked no later than October 14, 2013, or as the Court
25 otherwise may direct, to the Notice Administrator, in care of the address provided in the Class Notice.
26 Any person or entity requesting exclusion is requested to include in the signed written request the
27 information set forth under Question 17 of the Class Notice. So-called "mass" or "class" opt-outs
28 shall not be allowed. The Settlement Administrator shall forward copies of any written requests for

1 exclusion to Class Counsel and Barbara's Bakery's Counsel. The Settlement Administrator shall file a
2 list reflecting all timely requests for exclusion with the Court no later than ten (10) calendar days
3 before the Fairness Hearing. If the proposed settlement is finally approved, any potential Class
4 Member who has not submitted a timely written request for exclusion from the Class shall be bound
5 by all subsequent proceedings, orders, and judgments in the Action, including but not limited to the
6 Release, even if the potential Class Member previously initiated or subsequently initiates any litigation
7 against any or all of the Released Parties relating to the claims and transaction released in the Action.
8 Persons who properly exclude themselves from the Class shall not be entitled to participate in the
9 benefits of the Settlement Agreement. Barbara's Bakery's Counsel shall provide to the Settlement
10 Administrator, within ten (10) business days of the entry of this Preliminary Approval Order, a list of
11 all counsel for anyone who has litigation against Barbara's Bakery that involves Eligible Products.
12 The Settlement Administrator shall mail copies of the Class Notice to all such legal counsel.
13 Barbara's Bakery will promptly direct the Settlement Administrator to serve the Class Notice on
14 counsel for any Class Members who subsequently initiate litigation, arbitration, or other proceedings
15 against Barbara's Bakery relating to claims alleging events occurring during the Class Period, the
16 Eligible Products, and/or otherwise involving the Release.

17 12. **Objections and Appearances.** Any Class Member or counsel hired at any
18 Class Member's own expense who complies with the requirements of this paragraph may object to any
19 aspect of the proposed settlement.

20 a. Any Class Member who has not filed a timely written request for exclusion and
21 who wishes to object to the fairness, reasonableness, or adequacy of the Settlement Agreement, the
22 proposed Settlement, the award of Attorneys' Fees and Expenses, or the individual award to Plaintiff,
23 must deliver to the Class Counsel identified in the Class Notice and to Barbara's Bakery's Counsel,
24 and file with the Court, no later than October 14, 2013, or as the Court otherwise may direct: (a) a
25 written statement of objections, as well as the specific reason(s), if any, for each objection, including
26 any legal and factual support the Class Member wishes to bring to the Court's attention; (b) any
27 evidence or other information the Class Member wishes to introduce in support of the objections; (c) a
28 statement of whether the Class Member intends to appear and argue at the Fairness Hearing; and (d) a

1 list of all the Class Member's purchase(s) of Eligible Products. Class Members may do so either on
2 their own or through an attorney retained at their own expense. Any Class Member filing an objection
3 may be required to sit for deposition regarding matters concerning the objection. Any Class Member
4 who fails to comply with the provisions in this section shall waive and forfeit any and all rights he or
5 she may have to object, and shall be bound by all the terms of the Settlement Agreement, this Order,
6 and by all proceedings, orders, and judgments, including, but not limited to, the Release in the
7 Settlement Agreement in the Action.

8 b. Any Class Member, including a Class Members who files and serves a written
9 objection, as described above, may appear at the Fairness Hearing, either in person or through personal
10 counsel hired at the Class Member's expense, to object to or comment on the fairness, reasonableness,
11 or adequacy of the Settlement Agreement or the proposed Settlement, or to the award of Attorneys'
12 Fees and Expenses or the individual award to Plaintiff. Class Members or their attorneys who intend
13 to make an appearance at the Fairness Hearing must deliver a notice of intention to appear to one of
14 the Class Counsel identified in the Class Notice and to Barbara's Bakery's Counsel, and file said
15 notice with the Court, no later than October 14, 2013, or as the Court may otherwise direct.

16 c. Any interested party may file a reply to any written objection, as described in
17 Section 12(a) herein. A reply to an objection must be served and filed no later than seven (7) calendar
18 days before the Fairness Hearing.

19 13. **Post-Office Box(es).** The Settlement Administrator or their designated agent(s) shall
20 rent one or more post-office boxes in the name of the Clerk of the Court, to be used for receiving
21 requests for exclusion from the Class and any other communications. Other than the Court or the
22 Clerk of Court and the Notice Administrator, only Barbara's Bakery, Barbara's Bakery's Counsel,
23 Class Counsel, and their designated agents shall have access to these post-office box(es).

24 14. **Disclosure of Objections.** The Settlement Administrator, Barbara's Bakery's Counsel,
25 and Class Counsel shall promptly furnish to each other copies of any and all objections or written
26 requests for exclusion that might come into their possession.

27 15. **Termination of Settlement.** This Order shall become null and void and shall be
28 without prejudice to the rights of the parties, all of whom shall be restored to their respective positions

1 existing immediately before this Court entered this Order, if: (a) the settlement is not finally approved
2 by the Court, or does not become final, pursuant to the terms of the Settlement Agreement; (b) the
3 settlement is terminated in accordance with the Settlement Agreement; or (c) the settlement does not
4 become effective as required by the terms of the Settlement Agreement for any other reason. In such
5 event, the settlement and Settlement Agreement shall become null and void and be of no further force
6 and effect, and neither the Settlement Agreement nor the Court's orders, including this Order, relating
7 to the settlement shall be used or referred to for any purpose whatsoever.

8 16. **Use of Order.** This Order shall be of no force or effect if the settlement does not
9 become final and shall not be construed or used as an admission, concession, or declaration by or
10 against Barbara's Bakery of any fault, wrongdoing, breach, or liability. Nor shall this Order be
11 construed or used as an admission, concession, or declaration by or against Plaintiff or the other Class
12 Members that their claims lack merit or that the relief requested is inappropriate, improper,
13 unavailable, or as a waiver by any party of any defenses or claims he, she, or it may have in this
14 Action or in any other lawsuit.

15 17. **Retaining Jurisdiction.** This Court shall maintain continuing jurisdiction over these
16 settlement proceedings to assure the effectuation thereof for the benefit of the Class.

17 18. **Continuance of Hearing.** The Court reserves the right to adjourn or continue the
18 Fairness Hearing without further written notice.

19
20
21 June 24, 2013



Honorable Charles R. Breyer
UNITED STATES DISTRICT JUDGE