

**FILED**  
Clerk of the Superior Court

NOV 18 2016

By: J. Browder, Deputy

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SAN DIEGO**

CHRISTINE CUMMING, on behalf of herself, all  
others similarly situated, and the general public

Plaintiff,

v.

BETTERBODY FOODS & NUTRITION, LLC,

Defendant.

Case No.: 37-2016-00019510-CU-BT-CTL

**~~PROPOSED~~ ORDER GRANTING  
PRELIMINARY APPROVAL TO CLASS  
SETTLEMENT AND NOTICE PLAN**

Dept.: C-69  
Judge: Hon. Katherine Bacal

1 Plaintiff's motion for preliminary approval of a proposed class action settlement came on for hearing  
2 on November 18, 2016.<sup>1</sup> Having read and considered the parties' Settlement Agreement<sup>2</sup> and plaintiff's  
3 application and all papers submitted in connection therewith, IT IS HEREBY ORDERED:

4 1. This Order incorporates by reference the definitions in the Settlement Agreement, and all  
5 terms used herein shall have the same meaning as that set forth in the Settlement Agreement, provided  
6 however, that in the event of any inconsistency, the terms of this Order shall control.

7 2. For purposes of settlement only, and in accordance with the standards set forth in *Dunk v.*  
8 *Ford Motor Co.* (1996) 48 Cal. App. 4th 1794, the Court preliminarily certifies this litigation as a class action  
9 and preliminarily certifies the settlement Class as follows:

10 All persons who, between January 1, 2013 and the date of this Order, purchased, for  
11 personal or household use, and not for resale or distribution purposes, BetterBody's  
Organic Extra Virgin Coconut Oil, or BetterBody's Organic Refined Coconut Oil.

12 3. The Court finds that the requirements of Cal. Code Civ. P. § 382 have been satisfied and the  
13 Court has made a preliminary determination that plaintiff Christine Cumming is an adequate Class  
14 Representative for the Class.

15 4. The Court finds that plaintiff's counsel, The Law Office of Jack Fitzgerald, PC, and The Law  
16 Office of Paul K. Joseph, PC, and each of their attorneys, can adequately represent the Class, and hereby  
17 appoints them Class Counsel.

18 5. The Court finds that the proposed Settlement, as set forth in the Settlement Agreement, falls  
19 within the range of a settlement that may be granted final approval, and accordingly GRANTS plaintiff's  
20 motion for preliminary approval.

21 6. The Court appoints Dahl Administration as the settlement administrator.

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23 <sup>1</sup> On August 30, 2016, plaintiff submitted an unopposed ex parte application for preliminary approval of class  
24 action settlement. Rather than grant the application ex parte, the Court set plaintiff's motion for preliminary  
25 approval of class action for a noticed hearing on October 14, 2016, at which time the Court would consider  
26 the papers already submitted and any additional argument. On October 14, the Court requested additional  
briefing on certain questions regarding the settlement, and reset the hearing on plaintiff's motion for  
preliminary approval to November 18, 2016.

27 <sup>2</sup> Attached as Exhibit 1 to the Declaration of Jack Fitzgerald in Support of Plaintiff's Motion for Preliminary  
28 Approval.



1 Member who submits a timely and valid request for exclusion shall have no rights under the Settlement, will  
2 not be entitled to any benefits of the Settlement, and will not be bound by the Settlement Agreement, its  
3 Release, this Order, or the Final Approval Order and Judgment. Absent relief from the Court, Class Members  
4 who do not request exclusion by timely completing and mailing to Dahl Administration an Opt Out Form,  
5 shall be deemed to be members of the Class, and will be bound by the terms and conditions of the Settlement  
6 Agreement, its Release, and the Final Approval Order and Judgment.

7 12. Any Class Member who wishes to object to all or any part of the proposed Settlement may do  
8 so by appearing at the Final Approval Hearing either in person or through an attorney at his or her own  
9 expense. Objecting Class Members may also file and serve a written objection no later than  
10 \_\_\_\_\_ [January 30, 2017].

11 13. The parties are permitted to file a response to any written objection, and in further support of  
12 the motion for final approval, on or before \_\_\_\_\_ [February 3, 2017].

13 14. The Court reserves the right to adjourn the date of the Fairness Hearing without further notice  
14 to the Class, and retains jurisdiction to consider all further applications arising out of or connected with the  
15 proposed Settlement.

16 15. Pending the Court's ruling at the Fairness Hearing, neither Class Representative, the Class  
17 Members, nor any other person or entity shall institute or prosecute any of the matters referenced as Released  
18 Claims in the Settlement Agreement.

19  
20 IT IS SO ORDERED.

21  
22 Dated: 11/18/16, 2016

KATHERINE A. BACAL

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Hon. Katherine Bacal  
Judge of the Superior Court