

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

MATT DIFRANCESCO, ANGELA MIZZONI, and LYNN
MARRAPODI, individually and on behalf of all others
similarly situated,

Plaintiffs,

v.

UTZ QUALITY FOODS, INC.,

Defendant.

Civil Action No. 1:14-CV-14744-DPW

**ORDER AUTHORIZING NOTICE OF CLASS SETTLEMENT AND NOTICE OF
FINAL FAIRNESS HEARING**

WHEREAS, a class action is pending before the Court entitled *DiFrancesco, et al. v. Utz Quality Foods, Inc.*, Case No. 1:14-CV-14744-DPW (D. Mass.);

WHEREAS, Plaintiffs (also referred to as “Settlement Class Representatives” for purposes of the Settlement Agreement), for themselves and on behalf of the Settlement Class, and Utz Quality Foods, LLC, f/k/a Utz Quality Foods, Inc., (“Utz” or “Defendant”) have entered into a Settlement Agreement (ECF No. 75), including amendments filed on May 23, 2017;

WHEREAS, the proposed Settlement Agreement, together with the exhibits attached thereto and subsequent amendments, sets forth the terms and conditions for a proposed settlement and dismissal of the Action with prejudice as to Utz for the claims of the Settlement Class upon the terms and conditions set forth in the Settlement Agreement; and

WHEREAS, this matter is before the Court upon the agreement of the Parties and the motion of Plaintiffs seeking authorization to issue notice of the proposed settlement and of the Final Approval Hearing described below, which motion the Court has fully considered along with the Settlement Agreement and exhibits thereto and related submissions and arguments made in related hearings.

Good cause being shown, IT IS HEREBY ORDERED AND DECREED, AS FOLLOWS:

1. Terms and phrases in this order shall have the same meaning as ascribed to them in the Parties’ Settlement Agreement, as amended.

Settlement Class Certification

2. A plaintiff class (the “Settlement Class”) is certified, pursuant to Fed. R. Civ. P. 23, for settlement purposes only.

The Settlement Class is defined to include: “All persons who, during the Class Period purchased in the United States any of the Eligible Products for use and not resale. Excluded from the Class are: (a) Utz’s board members or executive-level officers; (b) persons who purchased the Eligible Products primarily for the purpose of resale, including, but not limited to, retailers or re-sellers of the Eligible Products; (c) governmental entities; (d) persons who timely and properly exclude

themselves from the Class as provided in this Agreement; and (e) the Court, the Court's immediate family, and Court staff.”

- a. The Settlement Class satisfies the requirements for class certification under Fed. R. Civ. P. 23(a) for settlement purposes in that: (1) the Court finds that the Settlement Class is so numerous that joinder of all members is impractical; (2) there are questions of law or fact common to the Settlement Class; (3) the representative Plaintiffs' claims are typical of those of the Settlement Class; (4) the representative Plaintiffs and Class Counsel will fairly and adequately represent the interests of the Settlement Class, and there are no apparent conflicts of interest between members of the Settlement Class; and (5) questions of law and fact common to the Settlement Class predominate over any questions affecting only individual members of the Settlement Class.
- b. Consequently, the Settlement Class satisfies the requirements of Fed. R. Civ. P. 23(b)(3), for settlement purposes only.

3. The Court hereby appoints Plaintiffs Matt DiFrancesco, Angela Mizzoni, and Lynn Marrapodi as Settlement Class Representatives.

4. The Court hereby appoints Tina Wolfson and Robert Ahdoot of Ahdoot & Wolfson, PC as Class Counsel.

Preliminary Review

5. Plaintiffs have moved the Court for review of the Settlement Agreement and for authorization to issue notice in accordance with that Settlement Agreement. The Settlement Agreement, together with the documents incorporated therein, sets forth the terms and conditions for a proposed settlement and dismissal of the Action with prejudice against Utz. The Court, having read and considered the Settlement Agreement and having heard the Parties and being fully advised in the premises, hereby authorizes issuance of notice in accordance with the Settlement Agreement.

6. This Court finds that it has jurisdiction over the subject matter of this action and over all Parties to the Action, including all members of the Settlement Class.

7. The Court finds that, subject to the Final Approval Hearing, the Settlement Agreement falls within the range of possible approval as fair, reasonable, adequate, and is in the best interests of the Settlement Class as to their claims against Utz. The Court further finds that the Settlement Agreement substantially fulfills the purposes and objectives of the class action, and provides beneficial relief to the Settlement Class. The Court also finds that the Settlement Agreement: (a) is the result of serious, informed, non-collusive arms' length negotiations involving experienced counsel familiar with the legal and factual issues of this case and made with the assistance of Hon. Peter Lichtman (Ret.) of JAMS; (b) is sufficient to warrant notice of the settlement and the Final Approval Hearing to the Settlement Class; (c) meets all applicable requirements of law, including Federal Rule of Civil Procedure 23, and the Class Action Fairness Act ("CAFA"), 28 U.S.C. § 1715; and (d) is not a finding or admission of liability by Utz.

Notice and Administration

8. Angeion Group ("Angeion") is hereby appointed as Settlement Administrator and shall perform all the duties of the Settlement Administrator as set forth in the Settlement Agreement and this order.

9. The Court finds that the Notice plan and all forms of Notice to the Class as set forth in the Settlement Agreement and Exhibits 2 and 6 thereto, as amended (the "Notice Program"), is reasonably calculated to, under all circumstances, apprise the members of the Settlement Class of the pendency of this action, the certification of the Settlement Class, the terms of the Settlement Agreement, and the right of members to object to the settlement or to exclude themselves from the Class. The Notice Program is consistent with the requirements of Rule 23 and due process, and constitutes the best notice practicable under the circumstances.

10. The Court thus hereby approves the Notice Program, including the proposed Notice documents attached as Exhibits 2 and 6 to the Settlement Agreement. The Court also approves the plan for Claims administration, including the Claim Form attached as Exhibit 1 to

the Settlement Agreement. The Parties may, by agreement, revise the Notice or Claim Form documents in ways that are not material, or in ways that are appropriate to update those documents for purposes of accuracy or formatting.

11. In accordance with the Settlement Agreement, on or before **March 30, 2019** (15 calendar days after the entry of this Notice Approval Order on March 15, 2019) (the “Notice Date”), and subject to the requirements of the Settlement Agreement and this Notice Approval Order, Class Counsel shall coordinate with the Settlement Administrator to provide Notice pursuant to the Notice Program as follows:

- a. The Settlement Administrator shall post, on or before the Notice Date, the Summary Notice on the Settlement Website, as specified in the Settlement Agreement and as set forth in the Declaration of the Settlement Administrator;
- b. The Settlement administrator shall publish, on or before the Notice Date, the Long Form Notice on the Settlement Website, as specified in the Settlement Agreement and as set forth in the Declaration of the Settlement Administrator; and
- c. Providing the Internet URL address of the Settlement Website (www.UtzSettlement.com) in the Long Form Notice and the Summary Notice.

12. Class Members who wish to receive their benefits under the Settlement Agreement must complete and submit a valid Claim Form. All Claim Forms must be postmarked or received by the Settlement Administrator not later than **July 28, 2019** (120 days from the Notice Date).

Exclusion

13. Settlement Class Members who wish to exclude themselves from the Settlement Class for purposes of this Settlement may do so by submitting a request for exclusion to the Settlement Administrator not later than **June 13, 2019** (75 days after the Notice Date) (the “Opt

Out Deadline”). The Opt Out Deadline shall be clearly posted on the Class Notice, available at the Settlement Website, www.UtzSettlement.com. The request for exclusion must comply with the exclusion procedures set forth in the Class Notice and include from the settlement Class Member (a) their full name; (b) mailing address; (c) a clear statement communicating that they elect to be excluded from the Settlement Class, do not wish to be a settlement Class Member, and elect to be excluded from any judgment entered pursuant to the Settlement; (d) the case name and case number; and (e) their signature. A request for exclusion may not request exclusion of more than one member of the Settlement Class.

14. Any member of the Settlement Class who timely requests exclusion consistent with these procedures may not file an objection to the Settlement and shall be deemed to have waived any rights or benefits under this Settlement. However, settlement Class Members who fail to submit a valid and timely request for exclusion shall be bound by all terms of the Settlement Agreement and the Final Judgment, regardless of whether they have requested exclusion from the Settlement.

Objections

15. Any member of the Settlement Class who has not timely filed a request for exclusion may object to the granting of final approval to the settlement. Settlement Class Members may object on their own, or may do so through separate counsel at their own expense.

16. Any written objection to the Settlement must comply with the objection procedures set forth in the Class Notice, and include: (i) identifying information of the objector, including the full legal name, address, phone number, and, if available, email address, and the same contact information for any counsel representing the objector; (ii) the case name and number; (iii) a statement containing the basis and reasons for the objection, accompanied by any legal support for the objection and any evidence or other information the objector wishes to introduce in support of the objection; (iv) a statement of whether the objector intends to appear at the Fairness Hearing, either with or without counsel, and the amount of time for speaking that will be requested by the objector at the Fairness Hearing; and (v) a statement of the objector’s

membership in the Settlement Class, including all information required by the Claim Form. The objection must be submitted to the Court by filing the written objection through the Court's Case Management/Electronic Case Files system, or by any other method the Court accepts filings. Furthermore, a copy must be delivered to Class Counsel, to Utz's Counsel, and to the Court at 1 Courthouse Way, Boston, MA 02210. Any objection must be filed not later than **June 13, 2019** (75 days after the Notice Date) (the "Objection Deadline"). The Objection Deadline shall be clearly posted on the Class Notice, available at the Settlement Website, www.UtzSettlement.com. If the objector is represented by counsel, said counsel shall request admission to the District of Massachusetts for the purposes of the objection.

17. Any member of the Settlement Class who fails to file and serve a timely written objection in compliance with the requirements of this order and the Settlement Agreement shall be deemed to have waived any objections and shall be foreclosed from making any objections (whether by appeal or otherwise) to the Settlement.

Fairness Hearing

18. A fairness hearing (the "Final Approval Hearing" or "Fairness Hearing") shall be held before this Court on **September 13, 2019, at 3:00 p.m.**, in Courtroom 1 on the 3rd Floor of the United States District Court for the District of Massachusetts, 1 Courthouse Way, Boston, MA 02210 to consider: (a) whether the proposed settlement of the Action on the terms and conditions provided for in the Settlement Agreement is fair, reasonable and adequate and should be given final approval by the Court; (b) whether a final judgment should be entered; (c) whether to award payment of Attorneys' Fees, and Expenses to Class Counsel and in what amount; and (d) whether to award payment of a Service Award to the Plaintiffs and in what amount. The Court may adjourn the Fairness Hearing without further notice to Class Members.

19. By no later than **May 30, 2019** (14 days prior to the Objection Deadline), papers supporting the Attorneys' Fee award shall be filed with the Court and posted to the settlement website. Replies in support of such papers, responding to any objections to the requested fees, shall be filed on or before **June 20, 2019** (seven days after the Objection Deadline).

20. Papers in support of final approval of the settlement Agreement shall be filed with the Court no later than **May 30, 2019** (14 days prior to the Objection Deadline). Replies in support of such papers, responding to any objections to final approval, shall be filed on or before **June 20, 2019** (seven days after the Objection Deadline).

Further Matters

21. In order to protect its jurisdiction to consider the fairness of the Settlement Agreement and to enter a final order and judgment having binding effect on all Settlement Class Members, the Court hereby enjoins all members of the Settlement Class, and anyone who acts or purports to act on their behalf, from pursuing all other proceedings in any state or federal court that seek to address rights or claims of any Released Party or Settlement Class Member relating to, or arising out of, any of the Released Claims.

22. Settlement Class Members shall be bound by all determinations and judgments in the Action concerning the Action and/or Settlement Agreement, whether favorable or unfavorable.

23. All discovery and pretrial proceedings and deadlines are stayed and suspended until further notice from the Court, except for such actions as are necessary to implement the Settlement Agreement and this Order.

24. In the event that the Settlement Agreement is terminated pursuant to the provisions of the Settlement Agreement, then certification of the Settlement Class and the findings of this Court contained in this Order pertaining to class certification for settlement purposes, will be vacated, and the Parties will be returned to their positions *status quo ante* with respect to the Action as if the Settlement had not been entered into. In the event the Final Judgment is not achieved: (a) any court orders preliminarily or finally approving the certification of any Class contemplated by the Settlement and any other orders entered pursuant to the Settlement Agreement shall be null, void, and vacated, and shall not be used or cited thereafter by any person or entity in support of claims or defenses or in support of or in opposition to a class certification motion; and (b) the Settlement Agreement will become null and void (with the

exception of Section XI.D. therein) and shall have no force or effect, the Parties shall not be bound by the Settlement, the Parties will be returned to their respective positions existing immediately before the execution of the Settlement, and all of the Parties' respective pre-Settlement claims and defenses will be preserved, and the fact of the Settlement, that Utz did not oppose the certification of any class under the Settlement, or that the Court approved the certification of a Settlement Class, shall not be used or cited thereafter by any person or entity, including in any contested proceeding relating to the certification of any class in any matter or proceeding, including the Action.

IT IS SO ORDERED.

Dated:

March 15, 2019



HON. DOUGLAS P. WOODLOCK