

1 **GUTRIDE SAFIER LLP**

2 ADAM J. GUTRIDE (State Bar No. 181446)

3 adam@gutridesafier.com

4 SETH A. SAFIER (State Bar No. 197427)

5 seth@gutridesafier.com

6 KRISTEN SIMPLICIO (State Bar No. 263291)

7 kristen@gutridesafier.com

8 100 Pine Street, Suite 1250

9 San Francisco, California 94111

10 Telephone: (415) 336-6545

11 Facsimile: (415) 449-6469

12 **TYCKO & ZAVAREEI LLP**

13 HASSAN A. ZAVAREEI (State Bar No. 181547)

14 hzavareei@tzlegal.com

15 1828 L Street, N.W., Suite 1000

16 Washington, DC 20036

17 Telephone: (202) 973-0900

18 Facsimile: (202) 973-0950

19 Attorneys for Plaintiff and the Class

20 SUPERIOR COURT OF THE STATE OF CALIFORNIA

21 COUNTY OF ALAMEDA

22 Case No. RG 14726707

23 **CLASS ACTION**

24 ROHINI KUMAR, an individual, on behalf of  
25 herself, the general public and those similarly  
26 situated

27 Plaintiff,

28 v.

29 SAFEWAY, INC.,

30 Defendant,

31 PLAINTIFF'S CONSOLIDATED REPLY  
32 MEMORANDUM OF POINTS AND  
33 AUTHORITIES IN SUPPORT OF MOTION  
34 FOR FINAL APPROVAL OF CLASS  
35 ACTION SETTLEMENT AND  
36 APPLICATION FOR ATTORNEYS' FEES,  
37 COSTS AND INCENTIVE AWARD

38 Date: March 16, 2018

39 Time: 10:00 a.m.

40 Department: 21

41 Reservation No.: R-1904127

42 Honorable Judge Winifred Y. Smith

1 **I. INTRODUCTION**

2 This settlement featured a robust notice plan and generous cash refunds. More than 31,000  
3 class members have filed claims. In comparison, only five class members have opted out, and only  
4 two have submitted objections; both objections relate not to the merits of this settlement, but instead  
5 criticize the underlying case and the existence of class actions. (See Supplemental Declaration of H.  
6 Jake Hack (“Supp. Hack Decl.”) at ¶¶ 4-5.) As there is no basis to doubt the fairness of the  
7 settlement, it is now appropriate to finally approve the settlement, award the requested fees, costs  
8 and incentive, and enter judgment.

9 **A. The Objections Lack Merit**

10 Both objections, attached as Exhibit A to the Supplemental Declaration of H. Jake Hack,  
11 consist of opinions about the quality of Safeway Select Olive Oil and class action settlements in  
12 general. Neither criticizes the terms of the settlement or opposes the requested award of attorneys’  
13 fees and expenses and an incentive award to Plaintiff. The objections should be overruled.

14 **1. Murgatroyd Objection**

15 Mr. Murgatroyd claims to be a purchaser of Safeway Select Extra Virgin Olive Oil  
16 (“EVOO”). He lists four “grounds” for his objection—all of which criticize the underlying lawsuit,  
17 not the settlement:

- 18 • Because Safeway Select is “[l]ow priced,” that should indicate to consumers  
19 that the product “might be at the lower end of the measured standard, or even  
20 questionable in its labeling.”
- 21 • Since bottles of Safeway Select EVOO carry no seals from quality assurance  
22 groups, there is no reason to expect the oil to be “high quality.”
- 23 • Since there is no evidence that Safeway Select EVOO was mixed with non-  
24 olive oils, “no intention to harm can be established.”
- Plaintiff could have asked Safeway for a refund rather than file a lawsuit.

25 Supp. Hack Decl., Ex. B. All of the “grounds” for Mr. Murgatroyd’s objection are defenses  
26 Defendant could have made—and in some cases did make—in the litigation. Plaintiff achieved a

1 strong settlement despite these defenses, and Mr. Murgatroyd does not criticize the settlement.<sup>1</sup>

2 Because Mr. Murgatroyd’s objection amounts merely to his subjective opinion about the  
3 lawsuit, and not the fairness or reasonableness of the proposed settlement and requested attorneys’  
4 fees and incentive award, it should be rejected. *See 7-Eleven Owners for Fair Franchising v.*  
5 *Southland Corp.* (2000) 85 Cal. App. 4th 1135, 1150 (“In any event, the merits of the underlying  
6 class claims are not a basis for upsetting the settlement of a class action; the operative word is  
7 ‘settlement.’”). *See also Ebarle v. Lifelock, Inc.*, (N.D. Cal. Sept. 20, 2016) 2016 WL 5076203, at  
8 \*7 (rejecting objections which “provide no basis on which to challenge the settlement’s fairness or  
9 reasonableness”); *Shames v. Hertz Corp.* (S.D. Cal. Nov. 5, 2012) 2012 WL 5392159 at \*9  
10 (rejecting objection found to be “not a challenge to the fairness of the settlement, but a general  
11 observation about the merits of this case and [objector’s] opinion about the propriety of Defendants’  
12 conduct”).

## 13 2. Hanratty Objection

14 Mr. Hanratty also objects only to the merits of Plaintiff’s case and class action settlements in  
15 general, rather than the fairness or reasonableness of the settlement. First, he claims that Plaintiff  
16 lacks standing because “[n]o harm was done through the alleged mislabeling,” and “[i]f Plaintiff  
17 doesn’t like the product, they should just stop buying it.” The Court rejected the challenge to  
18 Plaintiff’s standing in its orders denying Safeway’s demurrer and in granting Plaintiff’s motion for  
19 class certification. Second, he claims that “this whole case is frivolous” and wastes the court’s,  
20 Safeway’s, and consumers’ resources. He does not, however, dispute Plaintiff’s expert testimony  
21 that the mislabeling caused all consumers to pay a higher price for the oil. And once again, if the  
22 case was as weak as Mr. Hanratty contends, Plaintiff is to be commended for achieving such an  
23 exceptional result. As with Mr. Murgatroyd, Mr. Hanratty’s unsubstantiated opinions provide no

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24 <sup>1</sup> In response to similar argument by Defendant, Plaintiff pointed out in the litigation that (1) the  
25 low price of Safeway Select EVOO did not negate Safeway’s claim that the oil was “extra virgin,”  
26 (2) the question was not whether the oil was “high quality” but whether it met the “extra virgin”  
27 standard, (3) Plaintiff’s legal claims did not required proof of “intent to harm” but rather likelihood  
of deception, and (4) the availability of individual refunds to those who complain is not sufficient to  
relieve a defendant of liability for classwide fraud.

1 ground to reject the settlement. *Cf. 7-Eleven Owners*, 85 Cal. App. 4th 1 at 1146 (outlining factors  
2 in evaluating fairness). *See also Perkins v. LinkedIn Corp.* (N.D. Cal. Feb. 16, 2016) 2016 WL  
3 613255, at \*4 (“The majority of objectors . . . object on the grounds that this case should never have  
4 been brought. These objections do not comment on any aspect of the Settlement but, rather, oppose  
5 the claims alleged as being frivolous. Because such objections appear to support no recovery for the  
6 Class, these objectors’ interests are adverse to the Class, and the objections are overruled.”); *Ko v.*  
7 *Natura Pet Products, Inc.* (N.D. Cal. Sept. 10, 2012) 2012 WL 3945541, at \*6 (“[A]n objection  
8 based on a concern for the Defendants and an apparent non-substantive assessment of the frivolity  
9 of the action are not germane to the issue of whether the settlement is fair. [Objector’s] apparent  
10 concern for the Defendants is inapposite, since the purpose of [federal] Rule 23(e)’s final approval  
11 process is the protection of absent class members, and not the Defendants.”).

12 **B. The Court Should Finally Approve The Settlement**

13 As compared to the five opt-outs and two objections, 31,158 individuals submitted timely  
14 claims. This overwhelmingly positive response weighs strongly in favor of final approval of the  
15 settlement and the requested attorneys’ fees, costs and incentive award. *See Dunk v. Ford Motor Co.*  
16 (1996) 48 Cal. App. 4th 1794, 1802, *as modified* (Sept. 30, 1996) (holding that there is a  
17 “presumption of fairness” when “the percentage of objectors is small”) (citing Newberg & Conte,  
18 Newberg on Class Actions, § 11.41, pp. 11-91). *See also 7-Eleven Owners*, 85 Cal. App. 4th at 1145  
19 (finding a settlement fair where response of absent class members was “overwhelmingly positive”  
20 as only 1.5 percent elected to opt out); *In re: Mego Financial Corp. Securities Litigation*, 213 F.3d  
21 454, 459 (9th Cir. 2000) (low number of objectors and opt-outs supports trial court’s finding that  
22 settlement was “fair, adequate and reasonable”); *Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d  
23 1011, 1027 (low opt-outs provide “objective positive commentary as to its fairness”).

24 Plaintiff accordingly requests that the Court enter final judgment certifying the settlement  
25 class and approving the settlement, granting her application for an incentive award of \$6,490.00,  
26 and awarding her counsel \$1,426,500.00 in attorneys’ fees and costs. Finally, Plaintiff requests that  
27 the Court set the final compliance hearing for July 20, 2018.

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DATED: March 2, 2018



By: \_\_\_\_\_

Adam Gutride

**GUTRIDE SAFIER LLP**  
100 Pine Street, Suite 1250  
San Francisco, California 94111  
Telephone: (415) 336-6545  
Facsimile: (415) 449-6469

**TYCKO & ZAVAREEI LLP**  
Hassan A. Zavareei  
1828 L Street, N.W., Suite 1000  
Washington, DC 20036  
Telephone: (202) 973-0900  
Facsimile: (202) 973-0950

Attorneys for Plaintiff and the Class

**PROOF OF SERVICE**

I, Kristen Simplicio, hereby declare the following:

My business address is 100 Pine Street, Suite 1250, San Francisco, California. I am employed in the County of San Francisco. I am over the age of 18 years and not a party to the within cause.

On March 2, 2018, I served the following documents:

PLAINTIFF’S CONSOLIDATED REPLY IN SUPPORT OF MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND APPLICATION FOR ATTORNEYS’ FEES, COSTS AND INCENTIVE AWARD

SUPPLEMENTAL DECLARATION OF ADAM GUTRIDE

SUPPLEMENTAL DECLARATION OF HASSAN ZAVAREEI

SUPPLEMENTAL DECLARATION OF H. JAKE HACK

[PROPOSED] ORDER GRANTING FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND JUDGMENT

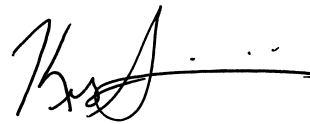
[PROPOSED] ORDER GRANTING APPLICATION FOR ATTORNEYS’ FEES, COSTS AND INCENTIVE AWARD

[X] VIA E-MAIL TO:

- Jeff Margulies - jeff.margulies@nortonrosefulbright.com
- Andy Guo – andy.guo@nortonrosefulbright.com,
- Monica Tapia - monica.tapia@nortonrosefulbright.com
- Diana Cardenas – Diana.cardenas@nortonrosefulbright.com

pursuant to the parties’ August 4, 2014 e-mail service stipulation.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this document was executed on March 2, 2018 at Berkeley, California.



Kristen Simplicio, Esq.  
100 Pine Street, Suite 1250  
San Francisco, California 94111