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FILED
ALAMEDA COUNTY

MAR 16 2018

CLERK OF THE SUPERIOR COURT

By *C. W. J.* Deputy

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MAR - 2 2018

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

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

Plaintiff,

v.

SAFEWAY, INC.

Defendant.

CASE NO. RG 14726707

UNLIMITED CIVIL CASE

~~PROPOSED~~ ORDER GRANTING FINAL
APPROVAL OF CLASS ACTION
SETTLEMENT AND JUDGMENT

DATE: March 16, 2018

TIME: 10:00 a.m.

CTRM: 21

Hon. Judge Winifred Smith

1 The pending motions seek final approval of a class action settlement and an award of
2 attorneys' fees, expenses and an incentive to the named Plaintiff and her counsel. For the reasons
3 stated herein, the motions are granted.

4 In her complaint, Plaintiff alleged that Defendant had marketed and sold its Safeway
5 Select brand of olive oil with the representation "Imported from Italy," although most of the oil
6 was extracted in countries other than Italy, from olives grown in those countries. Plaintiff also
7 alleged that Defendant had marketed and sold a subset of the Safeway Select olive oil with the
8 representation "Extra Virgin," although Defendant's procurement, bottling, and distribution
9 practices did not adequately ensure that the oil would meet the "extra virgin" standard through the
10 date of retail sale or the "best by" date on the bottles. Plaintiff alleged that Defendant's labeling
11 and marketing of the oil violated the Tariff Act of 1930, as amended, 19 U.S.C. 1304, and its
12 implementing regulations, 19 C.F.R. section 134.46; the Food Drug and Cosmetic Act, 21 U.S.C.
13 sections 301 *et seq.*, and its implementing regulations, 21 C.F.R. sections 101.18 *et seq.*; the U.S.
14 Department of Agriculture regulations regarding Olive Oil and Olive-Pomace Oil, 75 Fed. Reg.
15 22363 (Apr. 28, 2010); the Sherman Food, Drug and Cosmetic Law, California Health and Safety
16 Code ("Cal. Health & Saf. Code") sections 109875 *et seq.*; and California law regarding grades
17 of olive oil, Cal. Health & Saf. Code § 112877. She made claims for violations of the California
18 Consumer Legal Remedies Act, Civil Code sections 1780 *et seq.* ("CLRA"), false advertising
19 under California Business and Professions Code sections 17500 *et seq.*; unfair business practices
20 under California Business and Professions Code sections 17200 *et seq.*; breach of contract; breach
21 of the covenant of good faith and fair dealing; and fraud, deceit and/or misrepresentation. The
22 allegations in this paragraph are referred to as the "Allegations."

23 Defendant denied that there is any factual or legal basis for Plaintiff's allegations. It
24 contends that the labeling of the Products was truthful and non-misleading, and that purchasers
25 did not pay a "premium" for the Products as the result of any misrepresentations. It also denies
26 that Plaintiff or any other members of the settlement class have suffered injury or are entitled to
27 monetary or other relief. Defendant finally denies that this case should have been certified as a
28 class action, except for purposes of settlement.

1 On October 27, 2017, this Court granted preliminary approval of a proposed class action
2 settlement between the parties. In the Preliminary Approval Order, the Court provisionally
3 certified a Settlement Class of (i) All Persons who, between May 23, 2010 and December 16,
4 2016, purchased, at any Safeway retail store in the United States, except for purposes of resale,
5 any Safeway Select Extra Virgin Olive Oil and (ii) All Persons who, between January 1, 2012 and
6 July 31, 2015, purchased, except for purposes of resale, at any Safeway retail store in the United
7 States, any Safeway Select Pure Olive Oil or Safeway Select Extra Light in Flavor Olive Oil.
8 The Court also approved the procedures for giving notice and the forms of notice. Additionally,
9 in the Preliminary Approval Order, the Court concluded that the parties' proposed settlement, as
10 set forth in the Stipulation of Settlement, was within range of possible final approval.

11 Now, pending before the Court is the parties' Motion for Final Approval of Class Action
12 Settlement, and Plaintiff's Motion for an Award of Attorneys' Fees, Costs, and Incentive Awards.
13 In accordance with the Preliminary Approval Order and the Settlement Agreement, on March 16,
14 2018, the Court held a duly noticed Fairness Hearing for purposes of: (a) determining the fairness,
15 adequacy, and reasonableness of the settlement; and (b) ruling upon an application by Class
16 Counsel for a Fee and Expense Award and Plaintiffs' Incentive Awards.

17 The parties and the claim administrator have submitted evidence, which the Court accepts,
18 showing the following. As set forth in the declaration of Dominique Barnett, notice of the
19 settlement was printed on approximately 188,771 notices through the Catalina coupon system and
20 distributed at point-of-sale to purchasers of Safeway Select olive oil during the period between
21 November 27, 2017 to January 26, 2018. Further, as set forth in the declaration of the settlement
22 administrator, H. Jake Hack, approximately 89,318,579 advertisement impressions were
23 displayed on a variety of websites (both mobile and desktop) targeted at likely members of the
24 Settlement Class. These ads were purchased through the Google Display Network and Facebook.
25 Notice also was published once a week for four successive weeks in the East County Times four
26 times (on November 27 and December 4, 11, and 18 of 2017). Notice was also published via
27 online advertisements on the East Bay Times newspaper group's websites from December 5,
28 2017 through December 27, 2017, and then again from January 9, 2018 to January 16, 2018. All

1 of the online notices linked to, and the printed notices referred to, the Settlement Website, which
2 contains a detailed class notice, including the procedures for class members to exclude
3 themselves or object to the settlement, as well as a copy of the Settlement Agreement and motion
4 papers filed in connection with the settlement.

5 A total of five persons filed timely requests to opt out of the Settlement Class. In addition
6 two persons filed objections to the settlement, Allen Murgatroyd and Michael Hanratty.

7 Having considered all matters submitted to it at the hearing on the motion and otherwise,
8 including the complete record of this action, and good cause appearing therefore, the Court
9 hereby grants the Motion for Final Approval and Plaintiff's Motion for an Award of Attorney's
10 Fees, Costs, and Incentive Awards, and finds and concludes as follows:

11 1. The capitalized terms used in this Final Approval Order and Judgment shall have the
12 same meaning as defined in the Settlement Agreement except as may otherwise be ordered.

13 2. The Court has jurisdiction over this case and over all claims raised therein and all
14 Parties thereto.

15 3. The Court finds that the prerequisites of section 382 of the Code of Civil Procedure
16 and section 1781 of the Civil Code have been satisfied for certification of the Settlement Class for
17 settlement purposes because: Settlement Class Members are ascertainable and are so numerous
18 that joinder of all members is impracticable; there are questions of law and fact common to the
19 Settlement Class; the claims and defenses of the Class Representative are typical of the claims
20 and defenses of the Settlement Class she represents; the Class Representative has fairly and
21 adequately protected the interests of the Settlement Class with regard to the claims of the
22 Settlement Class she represents; common questions of law and fact predominate over questions
23 affecting only individual Settlement Class Members, rendering the Settlement Class sufficiently
24 cohesive to warrant a class settlement; and the certification of the Settlement Class is superior to
25 individual litigation and/or settlement as a method for the fair and efficient resolution of this
26 matter.

27 4. For purposes of the settlement and this Final Approval Order and Judgment, the Court
28 hereby finally certifies the following Settlement Class: "All Persons who, purchased, at any

1 Safeway retail store in the United States, except for purposes of resale, any (i) Safeway Select
2 Extra Virgin Olive Oil between May 23, 2010 and December 16, 2016 or (ii) any Safeway Select
3 Pure Olive Oil or Safeway Select Extra Light in Flavor Olive Oil between January 1, 2012 and
4 July 31, 2015.”

5 5. Excluded from the class are (1) the Honorable Judges Winifred Smith; Wynne
6 Carvill; Evelio Grillo; William Cahill (Ret.); (2) any member of their immediate families; (3) any
7 government entity; (4) Defendant; (5) any entity in which Defendant has a controlling interest; (6)
8 any of Defendant’s past or present subsidiaries, parents, affiliates, and officers, directors,
9 employees, legal representatives, heirs, successors, or assigns; (7) counsel for the Parties; and (8)
10 any Persons or Businesses who timely exclude themselves from the Settlement Class(es). The
11 following persons timely submitted requests to exclude themselves and shall be excluded from
12 the settlement class: Frank Sagasta, Sarah Sagasta, Carolina Stiggins, Stacey DeMoss, and Jordan
13 Sutterer

14 6. For the purpose of this settlement, the Court hereby finally certifies Plaintiff Rohini
15 Kumar, as Class Representative, and Gutride Safier LLP and Tycko & Zavareei LLP as
16 Settlement Class Counsel.

17 7. The Parties complied in all material respects with the Notice Plan set forth in the
18 Settlement Agreement. The Court finds that the Notice Plan set forth in the Settlement
19 Agreement, and effectuated pursuant to the Preliminary Approval Order, constituted the best
20 notice practicable under the circumstances and constituted due and sufficient notice to the
21 Settlement Class of the pendency of the Litigation; the existence and terms of the Settlement
22 Agreement; their rights to make claims, exclude themselves, or object; and the matters to be
23 decided at the Final Approval Hearing. Further, the Notice Plan satisfied the requirements of the
24 United States and California Constitutions, Civil Code section 1781, Rule of Court 3.769, and any
25 other applicable law.

26 8. The Court has determined that full opportunity has been given to the members of the
27 Settlement Class to exclude themselves from the settlement, object to the terms of the settlement
28 or to Class Counsel’s request for attorneys’ fees and expenses and a Class Representative

1 payment, and otherwise participate in the Final Approval Hearing held on March 2, 2018. The
2 Court has considered all submissions and arguments made at the final approval hearing provided
3 by Class Members objecting to the settlement as well as the Parties' responses to those
4 objections, and has determined, for all the reasons set forth in the Parties' responses, that none of
5 the objections have any merit or warrant disapproval of the Settlement Agreement. The two
6 objectors raise no objections that go to the fairness of the settlement, but instead focus their
7 criticisms on the Plaintiff's ability to prove her claims. For example, the objectors take issue with
8 Plaintiff's ability to show that defendant intended to cause harm and whether consumers could
9 have reasonably expected the olive oil to be of a sufficient quality. These objections go to the
10 merits of the case, not to the fairness of the settlement, and thus the Court overrules them. *See 7-*
11 *Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal. App. 4th 1135, 1150
12 (overruling objections as "the merits of the underlying class claims are not a basis for upsetting
13 the settlement of a class action; the operative word is 'settlement.'") All objections to the
14 settlement are overruled.

15 9. The Court finds that the settlement is in all respects fair, reasonable, and adequate.
16 The Court therefore finally approves the settlement for all the reasons set forth in the Motion for
17 Final Approval including, but not limited to, the fact that the Settlement Agreement was the
18 product of informed, arms-length negotiations between competent, able counsel and conducted
19 with the oversight and involvement of several independent, well respected, and experienced
20 mediators; the record was sufficiently developed and complete through meaningful discovery and
21 motion proceedings to have enabled counsel for the Parties to have adequately evaluated and
22 considered the strengths and weaknesses of their respective positions; the Litigation involved
23 disputed claims, and this dispute underscores the uncertainty and risks of the outcome in this
24 matter; the settlement provides meaningful remedial and monetary benefits for the disputed
25 claims; and the Parties were represented by highly qualified counsel who, throughout this case,
26 vigorously and adequately represented their respective parties' interests.

27 10. The Settlement is in the best interests of the Settlement Class in light of the degree of
28 recovery obtained in relation to the risks faced by the Settlement Class in litigating the class

1 claims. The relief provided to the Settlement Class Members under the Settlement Agreement is
2 appropriate as to the individual members of the Settlement Class and to the Settlement Class as a
3 whole. All requirements of statute, rule, and Constitution necessary to effectuate the settlement
4 have been met and satisfied. The Parties shall continue to effectuate the Settlement Agreement in
5 accordance with its terms.

6 11. For a period beginning on the Effective Date and continuing for three years thereafter,
7 Safeway is enjoined as follows:

- 8 a. Not to use the phrases "Imported from Italy," "from Italy," "Made in
9 Italy," "Produced in Italy," or any other phrase suggesting that the olive oil
10 in the bottle originates from Italy on the marketing or labeling of any
11 Product, unless the Product is entirely composed of oil from olives grown
12 and pressed in Italy.
- 13 b. If Defendant uses a phrase such as "Packed in Italy" or "Bottled in Italy"
14 on the marketing or labeling for any Product, such phrase shall be
15 immediately followed by the words, in the same font type and size, "olive oil
16 from various countries*". In addition, on the same label panel where the
17 phrase "Packed in Italy" or "Bottled in Italy" appears, there must be:
 - 18 i. The additional phrase "*Olives grown and pressed in [countries]" or
 - 19 ii. The phrase "*See [back/side] panel," in which case the language in
20 Section 11(b) must appear on the [back/side] panel.
- 21 c. If the countries required by Section 11(b) are listed in abbreviation format,
22 then on the same label where those abbreviations appear, there must be a
23 glossary of abbreviations, e.g. "CH=Chile, TU=Tunisia".
- 24 d. If Defendant uses the phrase "Extra Virgin" or term "EVOO" on any
25 Product, it must do all of the following:
 - 26 i. Package the Product in a green or brown glass container.
 - 27 ii. Include a "best by" or "use by" date not later than eighteen months
28 after the date of bottling.

1 e. The injunctive relief set forth in this section 11 is subject to modification
2 based on changes in law.

3 12. By operation of this Final Approval Order and Judgment, Plaintiff on the one hand,
4 and the Released Parties on the other hand, shall have unconditionally, completely, and
5 irrevocably released and forever discharged each other from and shall be forever barred from
6 instituting, maintaining, or prosecuting (1) any and all claims, liens, demands, actions, causes of
7 action, obligations, damages or liabilities of any nature whatsoever, whether legal or equitable or
8 otherwise, known or unknown, that actually were, or could have been, asserted in the Litigation,
9 based upon any violation of any state or federal statutory or common law or regulation, and any
10 claim arising directly or indirectly out of, or in any way relating to, the claims that actually were,
11 or could have been, asserted in the Litigation, that Plaintiff on the one hand, and either or both
12 Defendant] on the other hand, has had in the past, or now have, related in any manner to the
13 Released Parties' products, services or business affairs, and (2) any and all other claims, liens,
14 demands, actions, causes of action, obligations, damages or liabilities of any nature whatsoever,
15 whether legal or equitable or otherwise, known or unknown, that Plaintiff on the one hand, and
16 Defendant on the other hand, have had in the past or now have, related in any manner to any and
17 all Released Parties' products, services or business affairs, or otherwise.

18 13. By operation of this Final Approval Order and Judgment, Settlement Class Members
19 shall have unconditionally, completely, and irrevocably released and discharged the Released
20 Parties from any and all claims, liens, demands, actions, causes of action, obligations, damages or
21 liabilities of any nature whatsoever, known or unknown, whether arising under any international,
22 federal, state or local statute, ordinance, common law, regulation, principle of equity or otherwise,
23 that that arise out of or relate to the Allegations and were, or could have been, asserted in the
24 Litigation, excluding, except that there shall be no release of (1) claims for personal injury or
25 allegedly caused by use of the Products or (2) any defense, cross-claim or counter-claim in any
26 action initiated by any of the Released Parties against any Settlement Class Member. "Released
27 Parties" means Defendant and each and all of its predecessors in interest, former, present and
28 future direct and indirect subsidiaries, divisions, parents, owners, successors, and affiliated

1 e. The injunctive relief set forth in this section 11 is subject to modification
2 based on changes in law.

3 12. By operation of this Final Approval Order and Judgment, Plaintiff on the one hand,
4 and the Released Parties on the other hand, shall have unconditionally, completely, and
5 irrevocably released and forever discharged each other from and shall be forever barred from
6 instituting, maintaining, or prosecuting (1) any and all claims, liens, demands, actions, causes of
7 action, obligations, damages or liabilities of any nature whatsoever, whether legal or equitable or
8 otherwise, known or unknown, that actually were, or could have been, asserted in the Litigation,
9 based upon any violation of any state or federal statutory or common law or regulation, and any
10 claim arising directly or indirectly out of, or in any way relating to, the claims that actually were,
11 or could have been, asserted in the Litigation, that Plaintiff on the one hand, and either or both
12 Defendant] on the other hand, has had in the past, or now have, related in any manner to the
13 Released Parties' products, services or business affairs, and (2) any and all other claims, liens,
14 demands, actions, causes of action, obligations, damages or liabilities of any nature whatsoever,
15 whether legal or equitable or otherwise, known or unknown, that Plaintiff on the one hand, and
16 Defendant on the other hand, have had in the past or now have, related in any manner to any and
17 all Released Parties' products, services or business affairs, or otherwise.

18 13. By operation of this Final Approval Order and Judgment, Settlement Class Members
19 shall have unconditionally, completely, and irrevocably released and discharged the Released
20 Parties from any and all claims, liens, demands, actions, causes of action, obligations, damages or
21 liabilities of any nature whatsoever, known or unknown, whether arising under any international,
22 federal, state or local statute, ordinance, common law, regulation, principle of equity or otherwise,
23 that that arise out of or relate to the Allegations and were, or could have been, asserted in the
24 Litigation, excluding, except that there shall be no release of (1) claims for personal injury or
25 allegedly caused by use of the Products or (2) any defense, cross-claim or counter-claim in any
26 action initiated by any of the Released Parties against any Settlement Class Member. "Released
27 Parties" means Defendant and each and all of its predecessors in interest, former, present and
28 future direct and indirect subsidiaries, divisions, parents, owners, successors, and affiliated

1 companies and each and all of its present and former officers, directors, shareholders, partners,
2 employees, agents, representatives, suppliers, resellers, retailers, wholesalers, distributors,
3 customers, insurers, assigns, servants, attorneys, assignees, heirs, and executors, whether
4 specifically named and whether or not participating in the settlement by payment or otherwise.

5 14. Plaintiff and Defendant shall, by operation of this Final Approval Order and
6 Judgment, be deemed to have waived the provisions, rights and benefits of California Civil Code
7 § 1542, and any similar law of any state or territory of the United States or principle of common
8 law. In addition, Settlement Class Members shall, by operation of this Final Approval Order and
9 Judgment, be deemed to have waived the provisions, rights and benefits of California Civil Code
10 § 1542, and any similar law of any state or territory of the United States or principle of common
11 law, but only with respect to the matters released as set forth in paragraph 13 of this Order.

12 Section 1542 provides:

13 A general release does not extend to claims which the creditor does not know or suspect to
14 exist in his or her favor at the time of executing the release, which if known by him or her
15 must have materially affected his or her settlement with the debtor.

16 15. Nothing herein shall bar any action or claim to enforce the terms of the Settlement
17 Agreement.

18 16. No action taken by the Parties, either previously or in connection with the
19 negotiations or proceedings connected with the Settlement Agreement, shall be deemed or
20 construed to be an admission of the truth or falsity of any claims or defenses heretofore made or
21 an acknowledgment or admission by any Party of any fault, liability or wrongdoing of any kind
22 whatsoever to any other Party. Neither the Settlement Agreement nor any act performed or
23 document executed pursuant to or in furtherance of the settlement: (a) is or may be deemed to be
24 or may be used as an admission of, or evidence of, the validity of any claim made by the
25 Settlement Class Members or Class Counsel, or of any wrongdoing or liability of the persons or
26 entities released under this Final Approval Order and Judgment and the Settlement Agreement, or
27 (b) is or may be deemed to be, or may be used as an admission of, or evidence of, any fault or
28 omission of any of the persons or entities released under this Final Approval Order and Judgment

1 and the Settlement Agreement, in any proceeding in any court, administrative agency, or other
2 tribunal. Defendant's agreement not to oppose the entry of this Final Approval Order and
3 Judgment shall not be construed as an admission or concession by Defendant that class
4 certification was appropriate in the Litigation or would be appropriate in any other action.

5 17. For the reasons stated in the separate Order on Class Counsel's Application for an
6 award of attorneys' fees and costs and a class representative payment, the following amounts
7 shall be paid by Safeway:

- 8 a. Fees and expenses to Class Counsel: \$1,426,500.00
- 9 b. Class representative payment to Plaintiff Rohini Kumar: \$6,490.00

10 Such amounts, less \$50,000.00 in Attorneys' Fees and Costs, shall be paid according to the terms
11 of the Settlement Agreement. The remaining \$50,000.00 in Attorneys' Fees and Costs awarded to
12 Plaintiff's Counsel plus accrued interest shall be paid within seven (7) days after the Court issues
13 an order finding that all required distributions have been made to Settlement Class Members
14 (hereinafter "Compliance Order."). Interest on this \$50,000 shall be computed as if the
15 \$50,000.00 had been maintained in the Vanguard Prime Institutional money market fund from the
16 date of payment under Section 6.8 of the Settlement Agreement. Except as provided in this Order,
17 Plaintiff shall take nothing against Defendant by her Complaint. To facilitate the issuance of the
18 Compliance Order, the parties shall appear for a compliance hearing at 10:00 a.m. on July 20,
19 2018 and shall submit a final compliance status report, including a declaration from the Claim
20 Administrator, at least five Court days prior to the compliance hearing. If any appeals are taken
21 from entry of judgment such that the Effective Date does not occur prior to these deadlines,
22 Plaintiff shall alert the Court and shall reschedule the compliance hearing for a date to occur after
23 the Effective Date.

24 18. This order shall constitute a final judgment binding the parties with respect to this
25 Litigation.

26 19. Without affecting the finality of the judgment hereby entered, the Court reserves
27 jurisdiction over the implementation and enforcement of the Settlement Agreement.

28 20. Without further order of the Court, the parties may agree to reasonable extensions of

1 time to carry out any provisions of the Settlement Agreement.

2 There is no just reason for delay in the entry of this Judgment, and immediate entry by the
3 Clerk of the Court is expressly directed.

4 IT IS SO ORDERED this 16 day of March, 2018.

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HON. WINFRED SMITH
SUPERIOR COURT JUDGE