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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

RICHARD W. TRAMMELL, individually and on behalf of all others similarly situated,

Plaintiff,

v.

BARBARA'S BAKERY, INC., a California Corporation,

Defendant.

CASE NO. 3:12-CV-02664-CRB

PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT, INCENTIVE AWARD, AND AWARD OF ATTORNEYS' FEES AND COSTS

Hearing Date: November 8, 2013
Time: 10:00 A.M.
Place: Courtroom 6 (17th Floor)

The Honorable Charles R. Breyer, Presiding

Filed concurrently with the declarations of Shannon Wheatman, Ph.D., Richard Trammell and Robert Ahdoot

TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that, on November 8, 2013, at 10:00 AM, or at such other date and time as the Court may provide, in Courtroom 6 of the above-entitled Court, the Honorable Charles R. Breyer, Presiding, Plaintiff, Richard W. Trammell ("Plaintiff") will and hereby does move this Court to grant Final Approval of the Class Action Settlement memorialized by the

Settlement Agreement filed with this Court on April 25, 2013 (ECF Dkt. ("Dkt") Nos. 37, 37-1 to 37-10).

Plaintiff, on behalf of a putative nationwide Class in this action, respectfully moves this Court for the following relief:

1. Finally approving the proposed settlement as fair, reasonable and adequate pursuant to Fed. R. Civ. P. 23;

2. Finally certifying the Class for settlement purposes only;

3. Finding that the Notice was the best practicable notice under the circumstances and satisfied all Constitutional and other requirements;

4. Confirming Class Members who have submitted timely requests for exclusion;

5. Dismissing the Action pursuant to the terms and conditions of the Settlement Agreement;

6. Retaining jurisdiction over the enforcement and implementation of the Settlement Agreement and any amendments thereto;

7. Awarding attorneys' fees and costs and class representative awards; and

8. Issuing related orders.

This Motion thereby seeks that the Court enter a Final Order Approving Class Action Settlement and a Final Judgment in substantially the same form as those previously filed as Exhibits 3 and 4 of the Settlement Agreement (Dkt. Nos. 37-3 and 37-4).

Pursuant to paragraph 7 of the Court's 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 (Dkt. 58), Plaintiff expressly reserves all rights to "supplement[]" his Memoranda Of Points And Authorities Law In Support Of Final Approval "up to seven (7) days prior to the Fairness Hearing."

This Motion is based on and made on the ground set forth in this Notice of Motion and the attached Memorandum of Points and Authorities; the concurrently filed declarations of Richard Trammell, Shannon Wheatman, Ph.D., and Robert Ahdoot; the previously filed Settlement

Agreement (Dkt. 37), Motion for Preliminary Approval of Class Action Settlement (Dkt. 36), and supporting exhibits, declarations, and documents; as well as the pleadings, Orders, transcripts and other pleadings, papers and documents on file in this action; and any further evidence and arguments as may be presented at the hearing of this matter.

AHDOOT & WOLFSON, APC

Dated: September 30, 2013

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TABLE OF CONTENTS

I. INTRODUCTION AND SUMMARY OF ARGUMENT 1

II. HISTORY OF THE LITIGATION 3

A. The Litigation And Settlement 3

B. The Subsequent Cases and Motion to Intervene. 6

III. SETTLEMENT TERMS 7

A. The Settlement Class 7

B. Monetary Relief to Settlement Class Members 8

1. The Settlement Fund and Payments to Class Members 8

2. In the Unlikely Event That There Are Residual Settlement Funds, They Will Not Revert to Defendant. 9

C. Non-Monetary Relief to Class Members 11

1. Agreement to Modify Product Labeling and Advertising 11

2. Agreement to Eliminate GMO Ingredients from Certain Eligible Products 11

3. The Value of Non-Monetary Consideration Is at Least $3.5 Million — the Cost to Barbara's Bakery 12

D. Notice and Administration Costs, Attorneys' Fees and Expenses, and Plaintiff Incentive Award 12

IV. THE CLASS NOTICE PROGRAM AND ITS RESULTS 12

V. THE COURT SHOULD GRANT FINAL APPROVAL OF THE PROPOSED SETTLEMENT 15

A. The Settlement Was Reached After Serious, Informed, and Non-Collusive Arms-Length Negotiations and Mediation 16

B. The Risk, Complexity, Expense, and Duration of Continuous Litigation Favor Final Approval 18

C. The Substantial Relief Provided by the Settlement Favors Final Approval 20

D. The Extent of Discovery and Stage of the Proceedings Favors Approval 21

E. The Experience and Views of Counsel Favor Approval 22

F. The Reaction of the Class Members Favors Final Approval 23

VI. THE CLASS SHOULD BE CERTIFIED FOR SETTLEMENT PURPOSES 24

A. The Settlement Class Satisfies the Requirements of Federal Rule of Civil Procedure 23(a) 25
1. Numerosity 25
2. Commonality 25
3. Typicality 26
4. Adequacy of Representation 27
B. The Class Should Be Certified Under Federal Rule of Civil Procedure 23(b)(3) 27
1. Common Questions Predominate Over Individual Issues 28
2. A Class Action is the Superior Method to Settle This Controversy 29
VII. NOTICE TO THE SETTLEMENT CLASS SATISFIED THE REQUIREMENTS OF DUE PROCESS 29
VIII. CLASS COUNSEL'S FEE AND EXPENSE APPLICATION SHOULD BE APPROVED 31
A. Fees and Expenses Totaling 25% of the Settlement Fund Are Reasonable 31
B. Class Counsel Request 25% Of The Cash Settlement Fund Of $4 Million As Their Combined Fee And Expense Award 33
C. The Lodestar / Multiplier Crosscheck 34
1. The Hourly Rates are Reasonable 37
2. The Hours Expended Are Reasonable 39
D. Plaintiff's Expenses Are Reasonable and Compensable 39
E. The Requested Incentive Award Is Reasonable 40
IX. CONCLUSION 41

TABLE OF AUTHORITIES

CASES

Amchem Products, Inc. v. Windsor, 521 U.S. 591 (1997) 24, 28

Anderson v. Nextel Retail Stores, LLC, No. CV 07–4480–SVW (FFMx), 2010 U.S. Dist. LEXIS 43377 (C.D. Cal. Apr. 12, 2010) 17

Beck-Ellman v. Kaz USA, Inc., 283 F.R.D. 558 (S.D. Cal. 2012) 25

Bell v. Farmers Ins. Exch., 115 Cal. App. 4th 715 (2004) 33

Blackie v. Barrack, 524 F.2d 891 (9th Cir. 1975) 26

Buccellato v. AT&T Operations, Inc., No. 10-463, 2011 U.S. Dist. LEXIS 85699 (N.D. Cal. June 30, 2011) 36

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Center for Biological Diversity v. County of San Bernardino, 195 Cal. App. 4th 866 (2010) 35

Chavez v. Netflix, Inc., 162 Cal. App. 4th 43 (2008) 33, 39

Chun-Hoon v. McKee Foods Corp., 716 F. Supp. 2d 848 (N.D. Cal. 2010) 17, 21, 23

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Consumer Privacy Cases, 175 Cal. App. 4th 545 (2009) 35

Consumers Union of U.S., Inc. v. Alta-Dena Certified Dairy, 4 Cal.App. 4th 963 (1992) 10

Craft v. County of San Bernardino, 624 F. Supp. 2d 1113 (C.D. Cal. 2008) 36

Dennis v. Kellogg Co., 697 F.3d 858 (9th Cir. 2012) 10, 11

Deposit Guar. Nat'l Bank v. Roper, 445 U.S. 326 (1980) 29

Dunk v. Ford Motor Co., 48 Cal. App. 4th 1794 (1996) 32

Edmunson v. P&G, No. 10-CV-2256-IEG (NLS) 2011 U.S. Dist. LEXIS 102561 (S.D. Cal. Sep. 8, 2011) 18

Eisen v. Carlisle & Jacqueline, 417 U.S. 156 (1974) 30

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Garcia v. Gordon Trucking, Inc., No. 10-CV-0324, 2012 U.S. Dist. LEXIS 160052 (E.D. Cal. Oct. 31, 2012) 23

Garner v. State Farm Mut. Auto. Ins. Co., No. CV 08 1365 CW (EMC), 2010 U.S. Dist. LEXIS 49477 (N.D. Cal. Apr. 22, 2010) 16

Garner v. State Farm Mut. Auto. Ins. Co., No. CV 08 1365 CW(EMC), 2010 U.S. Dist. LEXIS 49477 (N.D. Cal. Apr. 22, 2010) 41

Glendale City Employees' Ass'n. v. Glendale, 15 Cal. 3d 328 (1975) 33

Glendora Cmty. Redev. Agency v. Demeter, 155 Cal. App. 3d 465 (1984) 36

Graham v. Daimler Chrysler Corp., 34 Cal. 4th 553 (2004) 35

Hanlon v. Chrysler Corp., 150 F.3d 1011 (9th Cir. 1998) ..... *passim*

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Hartless v. Clorox Co., 273 F.R.D. 630 (S.D. Cal. 2011) 28, 35, 39

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Hensley v. Eckhart, 461 U.S. 424 (1983) 35

Housing Rights Ctr. v. Sterling, No. CV 03-859 DSF (Ex), 2005 U.S. Dist. LEXIS 31872 (Nov. 2, 2005) 38

In re Compact Disc. Minimum Advertised Price Antitrust Litig., 216 F.R.D. 197 (D. Me. 2003) .. 31

In re Emulex Corp. Sec. Litig., 210 F.R.D. 717 (C.D. Cal. 2002) 27

In re Equity Funding Corp. Sec. Litig., 438 F. Supp. 1303 (C.D. Cal. 1977) 22

In re First Alliance Mortg. Co., 471 F.3d 977 (9th Cir. 2006) 26

In re Ins. Brokerage Antitrust Litig., 579 F.3d 241 (3d Cir. 2009) 39

In re Mego Fin. Corp. Secs. Litig., 213 F.3d 454 (9th Cir. 2000) 33, 41

In re Mengo Financial Corp. Sec. Litig., 213 F.3d 454 (9th Cir. 2000) 16

In re Mercury Interactive Corp. Sec. Litig., 618 F.3d 988 (9th Cir. 2010) 23

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In re Omnivision Techs., 559 F. Supp. 2d 1036 (N.D. Cal. 2007) 39

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In re Tobacco Cases I, 216 Cal. App. 4th 570 (2013) 35

In re Vioxx Class Cases, 180 Cal. App. 4th 116 (2009) 20

In re Vitamin Cases, 110 Cal. App. 4th 1041 (2003) 36

In re Vivendi Universal S.A. Sec. Litig., 765 F. Supp. 2d 512 (S.D.N.Y. 2011) 18

Iorio v. Allianz Life Ins. Co. of N. America, No. 05-CV-0633-JLS (CAB), 2011 U.S. Dist. LEXIS 21824 (S.D. Cal. March 3, 2011) 38

Johns v. Bayer Corp., 280 F.R.D. 551 (S.D. Cal. 2012) 28

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Kempf v. Barrett Bus. Servs., No. C-06-3161 SC, 2007 U.S. Dist. LEXIS 89447 (N.D. Cal. Nov. 20, 2007) 37

Ketchum v. Moses, 24 Cal. 4th 1122 (2001) 35, 37

Laffey v. Northwest Airlines, Inc., 572 F. Supp. 354 (D.D.C. 1983) 37

Lealao v. Beneficial Cal., Inc., 82 Cal. App. 4th 19 (2000) 32, 33, 35, 36

Lingenfelter v. Astrue, No. SA CV-03-00264-VBK, 2009 U.S. Dist. LEXIS 87685 (C.D. Cal. Sep. 3, 2009) 38

Linney v. Cellular Alaska P'ship, No. C-96-3008 DLJ, 1997 U.S. Dist. LEXIS 24300 (N.D. Cal. July 18, 1997) 17

Lo v. Oxnard European Motors, LLC, No. 11CV1009 JLS (MDD), 2011 U.S. Dist. LEXIS 144490 (S.D. Cal. Dec. 15, 2011) 30

Lobatz v. U.S. W. Cellular of Cal., Inc., 222 F.3d 1142 (9th Cir. 2000) 39

Local Joint Exec. Bd. of Culinary/Bartender Trust Fund v. Las Vegas Sands, Inc., 244 F.3d 1152 (9th Cir. 2001) 28

Love v. Mail on Sunday, No. CV-05-7798-ABC (PJWX), 2007 U.S. Dist. LEXIS 97061 (C.D. Cal. Sept. 7, 2007) 38

Marshall v. Holiday Magic, Inc., 550 F.2d 1173 (9th Cir. 1977) 19

Masters v. Wilhelmina Model Agency, Inc., 473 F.3d 423 (2nd Cir. 2007) 32

Mathias v. Smoking Everywhere, Inc., 2:09-cv-03434-GEB, 2011 U.S. Dist. LEXIS 121687 (E.D. Cal. Oct. 20, 2011) 25

McPhail v. First Command Fin. Planning, Inc., No. 05cv179-IEG-JMA, 2009 U.S. Dist LEXIS 26544 (S.D. Cal. Mar. 30, 2009) 34

Mendoza v. United States, 623 F.2d 1338, 1352 (9th Cir. 1980) 30

Milstein v. Huck, 600 F. Supp. 254 (E.D.N.Y 1984) 19

Mullane v. Cent. Hanover Bank & Trust Co., 339 U.S. 306 (1950) 30

Nachshin v. AOL, LLC, 663 F.2d 1034 (9th Cir. 2011) 10

Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc., 221 F.R.D. 523 (C.D. Cal. 2004) 24

Negrete v. Fid. and Guar. Life Ins. Co., No. CV-05-6837- CAS-MANx (C.D. Cal. April 19, 2010) 38

Officers for Justice v. Civil Service Commission, 688 F.2d 615 (9th Cir. 1982) ..... *passim*

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Paul, Johnson, Alston & Hunt v. Graulty, 886 F.2d 268 (9th Cir. 1989) 34

Pelletz v. Weyerhaeuser Co., 592 F. Supp. 2d 1322 (W.D. Wash. 2009) 41

POM Wonderful, LLC v. Purely Juice, Inc., No. 07-2633, 2008 U.S. Dist. LEXIS 110460 (C.D. Cal. Sept. 22, 2008) 38, 39

Powers v. Eichen, 229 F.3d 1249 (9th Cir. 2000) 32

Rankin v. Am. Greetings, Inc., No. 2:10-CV-01831-GGH, 2011 U.S. Dist. LEXIS 72250 (E.D. Cal. July 6, 2011) 35

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Rodriguez v. D.M. Camp & Sons, No.: 1:09-cv-00700 – AWI – JLT, 2013 U.S. Dist. LEXIS 69282 (E.D. Cal. May 15, 2013) 32

Rodriguez v. Disner, 688 F.3d 645 (9th Cir. 2012) 32

Rodriguez v. West Pub'g Corp., 563 F.3d 948 (9th Cir. 2009) 16, 21, 30, 40

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Shames v. Hertz Corp., No. 07-CV-2174-MMA(WMC), 2012 U.S. Dist. LEXIS 158577 (S.D. Cal. Nov. 5, 2012) 38

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Vasquez v. Superior Court, 4 Cal. 3d 800 (1971) 29

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Walmart Stores, Inc. v. Dukes, ____ U.S. _____, 131 S. Ct. 2541 (2011) 25

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Young v. Polo Retail, LLC, No C-02-4546 VRW, 2007 U.S. Dist. LEXIS 27269 (N.D. Cal. Mar. 28, 2007) 21

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STATUTES

Cal. Bus. & Profs. Code §17200 4

Cal. Bus. & Profs. Code §17500 4

Cal. Civ. Code §1750 4

Federal Rule of Civil Procedure 23 ..... 15, 25, 28, 29

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MEMORANDUM OF POINTS AND AUTHORITIES

Plaintiff and Class representative Richard Trammell respectfully submits this Memorandum in Support of the Motion for Final Approval of Class Action Settlement and Request for Entry of Final Judgment (the "Judgment") and Final Order Approving Class Action Settlement (the "Final Order").[1]

I. INTRODUCTION AND SUMMARY OF ARGUMENT

Plaintiff seeks final approval of a proposed nationwide class action Settlement with Barbara's Bakery, Inc. ("Barbara's Bakery") that was preliminarily approved by this Court as fair, reasonable, and adequate. Settlement Agreement ("Settlement Agmt.") (ECF Docket Nos. ("Dkt.") 37, 37-1 to 37-10 ("Settlement"); Order Granting Plaintiff's Motion for Preliminary Approval ("Preliminary Approval Order"), Dkt. 58). The Settlement satisfies Plaintiff's primary goal in bringing this lawsuit — monetary relief in the form of a payment of up to $100 for purchases of Barbara's Bakery, Inc.'s ("Barbara's Bakery") Eligible Products during the Class Period, an end to the challenged advertisements, and Barbara's Bakery's agreement to use reasonable and verifiable efforts to eliminate the use of GMO ingredients in most of the currently sold Eligible Products. This relief represents a significant, if not full refund, of all claimants' purchases, up to $100.

The gravamen of this litigation was Barbara's Bakery's allegedly false representations in its advertising and labeling of its Eligible Products. Barbara's Bakery advertised that its products were "all natural" and did not contain any artificial preservatives, additives, or flavoring. Plaintiff challenged these advertisements, asserting *inter alia* that the products are not "all natural" in that they contain ingredients that are synthetic and/or artificial, and/or they contain ingredients that are or are derived from Genetically Modified Organisms ("GMOs"). Although Barbara's Bakery denies all charges of wrongdoing or liability, the Parties have agreed to settle this matter upon the terms set forth in the Settlement Agreement.

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[1] Unless stated otherwise, all capitalized terms have the same meaning as set forth in the Settlement Agreement filed on April 25, 2013, and all ECF Docket ("Dkt") references are to docket entry numbers in this case.

The Settlement was reached after extended settlement negotiations and mediations presided over by the Honorable Eugene F. Lynch of JAMS, in addition to numerous and lengthy direct negotiations between the Parties. The Settlement provides for the creation of a $4 million non-revertible Settlement Fund to provide cash payments to Class Members and to pay Settlement-related fees and expenses. Settlement Agmt., §§IV.A.-IV.D. (Dkt. 37). Eligible claimants may receive up to $100 for valid claims made against the fund. *Id.* at §IV.C.

In addition to cash payments to Class Members, Barbara's Bakery has agreed to modify the marketing of the Eligible Products by removing the "all natural," "no artificial additives," "no artificial preservatives," and "no artificial flavors" statements from product labeling, Barbara's Bakery's website, and any other media or advertising for at least three years after the Final Settlement Date. *Id.* at §IV.E. Further, Barbara's Bakery has agreed to eliminate the use of GMO ingredients from a majority of the Eligible Products and subject them to the rigorous testing and standards of the nonprofit Non-GMO Project's Product Verification Program. *Id.* at §IV.F.

The value of this non-cash consideration to the Class is at least $3.5 Million (the cost to Barbara's Bakery) over the next 3 years. Declaration of David K. Rey in Support of Plaintiff's Motion for Preliminary Approval of Class Action Settlement ("Rey Decl.") (Dkt. 36-3). However, the full benefit to Class Members of being able to purchase non-GMO products in the future is exponentially greater.

Though there are currently sufficient claims submitted by Class Members so that *there will not be any residual*, in the event money remains in the Settlement Fund after all eligible claims are paid, it will be paid to 501(c)(3) nonprofit organizations whose work provides a benefit to the Class and bears a strong relationship to the claims that Plaintiff asserts in this action. Settlement Agmt., §IV.D.3 (Dkt. 37). The Parties have selected, and ask the Court to approve, the following charities: Consumers Union and Action for Healthy Kids.[2] *Id.*

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[2] These organizations are appropriate *cy pres* recipients. *See* Declaration of Elisa Odabashian in Support of Preliminary Approval of Class Action Settlement ("Odabashian Decl.") (Dkt. 36-4); Declaration of Mary Haley in Support of Preliminary Approval of Class Action Settlement ("Haley Decl.") (Dkt. 36-5).

Class Members must submit a Claim Form to receive monetary relief. *Id.* at Exhibit ("Exh.") 1 (Dkt. 37-1). The Claim Forms are available for easy electronic submission on the website established for this Settlement or via mail. Declaration of Shannon Wheatman, Ph.D. on Implementation and Adequacy of Notice Plan in Support of Plaintiff's Motion for Final Approval of Class Action Settlement ("Wheatman Decl."), ¶ 41 filed concurrently herewith; *Id.* at Exh. 6; *see also*, www.BarbarasBakerySettlement.com. The Claim Form is simple and straightforward. Class Members need only declare the monetary amount of their purchases of the Eligible Products that they purchased between May 23, 2008 and July 15, 2013 — no proof of purchase is required. *See* Wheatman Decl., Exh. 6; *see also* Settlement Agmt., §IV.B.3 and Exh. 1 (Dkt. 37).

In addition, the Settlement allows Class Counsel to apply for an award of attorneys' fees and litigation-related expenses from the Settlement Fund to be approved by the Court. Settlement Agmt., §IX.A (Dkt. 37). Counsel seeks an award of 25% of the cash Settlement Fund, or 13.3% of the total value of the Settlement (if non-monetary consideration is evaluated at cost to Barbara's Bakery), in attorneys' fees and out-of-pocket expenses. This amount equates to Class Counsel receiving their lodestar with a multiplier of 1.88. This is well within the acceptable range established by state and federal case law.

The Settlement represents an excellent recovery for the Class — a point confirmed by the fact that, as of September 27, 2013, only one Class Members has elected to opt out and that no objections have been filed to date. Wheatman Decl., ¶ 52. This is significant considering the wide breadth of the Court-approved Class Notice program, detailed below, which was designed to target the numerous potential Class Members.

For the reasons set forth below, the Court should find that the proposed Settlement is "fair, reasonable, and adequate" under Fed. R. Civ. P. 23(e)(2) and should be granted final approval and that the Class meets all of the applicable requirements for certification. The Court should also grant approval of the requested Attorneys' Fees and Expenses and incentive award to Plaintiff.

II. HISTORY OF THE LITIGATION

A. The Litigation And Settlement.

Class Counsel began investigating the facts underlying this matter months before filing this

action. Class Counsel reviewed and analyzed Barbara's Bakery's advertising and labeling, retained a consulting expert who assisted in understanding the scientific issues and in evaluating the accuracy of the advertising claims, and conducted an independent investigation of the scientific and factual basis for the advertising of the products at issue. Declaration of Robert Ahdoot filed concurrently herewith ("Ahdoot Decl.") at ¶¶ 3-4.

Plaintiff filed this Action on May 23, 2012, and sought to certify a class of all consumers in the United States who, during the Class Period, purchased Barbara's Bakery's products. A First Amended Complaint (Dkt. 5) was filed on June 28, 2012, and the Second Amended Complaint (Dkt. 29) was filed on January 30, 2013. The Second Amended Complaint alleges violations of California's Unfair Competition Law, Cal. Bus. & Profs. Code §17200 *et seq.* ("UCL"); California's False Advertising Law, Cal. Bus. & Profs. Code §17500 *et seq.* ("FAL"); California's Consumer Legal Remedies Act, Cal. Civ. Code §1750 *et seq.* ("CLRA"); and breach of express warranty. Plaintiff sought restitution, disgorgement of revenues, injunctive relief, damages, reasonable attorneys' fees and costs, statutory pre-judgment interest, and any other relief the court might deem just and proper.

Barbara's Bakery answered the First and Second Amended Complaints (Dkts. 10, 32), expressly denying any and all wrongdoing alleged in the action.

Class Counsel began conducting extensive discovery early in the litigation. The Parties negotiated and were able to agree on the terms of a lengthy Stipulated Protective Order that was later issued by the Court (Dkt. 18). Through significant discovery efforts, Class Counsel obtained and reviewed over thirty (30) banker's boxes of documents and approximately seventy (70) Gigabytes (GB) of data, which concerned: (i) label design and product formulation; (ii) marketing, advertising, media, and public relations; and (iii) financial information. Ahdoot Decl., ¶ 9.

In addition, Class Counsel conducted interviews of primary Barbara's Bakery's corporate witnesses who have been involved with the Eligible Products to address the following subjects: (i) sales and marketing; (ii) labeling; (iii) finance; (iv) document collection and retention; and (v) Barbara's Bakery's efforts to eliminate GMO ingredients from its products. *Id.* at ¶10.

The Parties began discussing potential settlement early in the litigation, in an effort to resolve the action as efficiently as possible. Counsel engaged in numerous settlement discussions as discovery proceeded. *Id.* at ¶ 12. The Parties agreed that retired Northern District Judge Eugene F. Lynch of JAMS, a respected and experienced mediator widely recognized as one of the best mediators in the state, would mediate the case. *See* www.jamsadr.com/lynch/ (last visited September 30, 2013). Class Counsel submitted a lengthy mediation brief to the mediator, and thereafter the Parties engaged in two rounds of mediation, on November 28, 2012, and again on January 11, 2013. Ahdoot Decl., ¶ 14. The principal terms of the Settlement were agreed upon at the second of these mediation sessions. *Id.* On January 31, 2013, the parties filed a Notice of Settlement with the Court (Dkt. 30).

Subsequently, the Parties engaged in additional extensive negotiations to finalize and memorialize all aspects of the Settlement Agreement, including each of the 10 exhibits. During this process, the Parties engaged Rust Consulting, Inc. and Kinsella Media, LLC to advise as to the mechanics and specifics of a notice program. The notice program and each document comprising the notice were negotiated and exhaustively refined to make them easy to read and understand and to maximize the likelihood of broad Class Member participation in the claims process. *Id.* at ¶¶ 15-16. As discussed below, the notice program was very effective.

On April 25, 2013, Plaintiff filed a Stipulation of Settlement (Dkt. 37) and a Motion for Preliminary Approval of Class Action Settlement (Dkt. 36), along with exhibits and supporting declarations. On April 26, 2013, Barbara's Bakery filed a Motion for Preliminary Approval of Class Action Settlement and Request for Preliminary Injunction, seeking to enjoin the Courts in the Subsequent Cases (defined below) from proceeding in those matters (Dkt. Nos. 39 to 42).

The Court held a hearing on June 21, 2013, and subsequently granted the Motion for Preliminary Approval and denied the Motion for Preliminary Injunction (Dkt. 56). The Court noted that the Settlement was an "excellent settlement," a "model of good lawyering on both sides," and reflected an "excellent job of resolving the case." Transcript of Proceeding (June 21, 2013), 8:10 17:20-25, Ahdoot Decl., Exh. 1.

On June 26, 2013, the Court issued its 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 ("Preliminary Approval Order") (Dkt. 58).

Immediately thereafter, Class Counsel, working with the Notice and Settlement Administrator, expended significant efforts in creating the Settlement website and ensuring the timely and correct implementation of the Notice Program described in the Declaration of Shannon Wheatman, Ph.D. in Support of the Motion for Preliminary Approval (Dkt. 36-2). Pursuant to the Preliminary Approval Order (Dkt. 58), dissemination of the Class Notice commenced on July 5, 2013. Wheatman Decl., ¶¶ 16, 35. Thereafter, Class Counsel oversaw the dissemination of notice and ensured that the Notice Program was carried out in a timely manner pursuant to its terms. Ahdoot Decl., ¶ 27.

B. The Subsequent Cases and Motion to Intervene.

Months after this action was commenced, and after the parties had made significant progress toward settlement, several other plaintiffs filed similar actions: (i) *Silber v. Barbara's Bakery, Inc.*, Case No. 1:12-cv-05511-WFK-RLM (E.D.N.Y) (filed Nov. 5, 2012); (ii) *Rojas v. Barbara's Bakery, Inc.*, Case No. CGC-12-525911 (San Francisco Superior Court) (filed Nov. 7, 2012); and (iii) *Moro v. Barbara's Bakery, Inc.*, Case No. 1:12-cv-06087-WFK-RLM (E.D.N.Y.) (filed Dec. 11, 2012) (collectively, the "Subsequent Actions").[3] The *Silber* and *Moro* action are both pending before the Honorable William F. Kuntz, II in the U.S. District Court for the Eastern District of New York.

On May 10, 2013, counsel in the *Silber* action filed a "letter" in this action voicing their opposition to the request for injunction and stay of the subsequent actions (Dkt. 43), to which Barbara's Bakery filed a reply (Dkt. 44). On May 29, 2013, the parties in *Silber*, *Rojas*, and *Moro* action filed a Motion for Intervention for the limited purpose of opposing Barbara's Bakery's

[3] Like this action, these three are putative class actions that are primarily premised on Barbara's Bakery's alleged false advertising of its products as "all natural," when in fact they contain genetically modified organisms ("GMOs") and other synthetic ingredients. *See, e.g.* Complaints filed in *Silber* (Dkt. Nos. 46-2 and 46-3), *Rojas* (Dkt. 46-4), and *Moro* (Dkt. 46-5).

Motion for Injunction (Dkt. Nos. 46, 46-1 - 46-7), along with an *ex parte* application to shorten time to have the Intervention Motion heard at the same time as the Motion for Preliminary Approval (Dkt. Nos. 47, 47-1 - 47-2). Barbara's Bakery opposed the *ex parte* application and filed a statement of non-opposition with respect to the Motion to Intervene (Dkt. Nos. 48 - 50). Plaintiff opposed the Motion to Intervene (Dkt. 51). This Court ultimately denied the Motion to Intervene as moot "in light of the fact the motion for preliminary injunction was denied" (Dkt. 56).

On July 31, 2013, after being informed in a status report that this Court had preliminary approved the settlement and that the notice program had begun, the Honorable William F. Kuntz, II stayed the *Moro* and *Silber* actions. Order [Staying Actions], Ahdoot Decl., Exh. 2).[4] On June 25, 2013, after Barbara's Bakery filed a notice of the Settlement, the San Francisco Superior Court issued an Order to Show Cause Re Dismissal of the *Rojas* action with a hearing date of December 10, 2013; the Plaintiff filed a response to the OSC on July 1, 2013 and, as of September 30, 2013, the Court has yet to rule on the OSC. Ahdoot Decl. ¶ 33.

III. SETTLEMENT TERMS

The Settlement Agreement (Dkt. Nos. 37 to 37-10) contains the complete terms of the settlement and is summarized below.

A. The Settlement Class

The Settlement defines a national Settlement Class under Rule 23(b)(3) composed of all persons who, during the Class Period, purchased in the United States any of the Eligible Products.[5]

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[4] Judge Kuntz ruled "…that a stay of these actions is clearly warranted. The preliminarily approved nationwide class in *Trammell* includes within it the putative classes identified by Silber and Moro. The *Trammell* settlement contemplates relief identical to the relief sought by the Plaintiffs in *Silber* and *Moro*-removal of references to "natural" and "all natural" in Defendant's labeling and marketing. To the extent Silber or Moro believe additional relief is necessary to adequately remedy their claims, they may file an objection to the *Trammell* settlement. Defendant should not be compelled to defend duplicative-and potentially inconsistent-litigation. For all these reasons, as well as the particularly timely interest in conserving judicial resources, this Court stays both of the above captioned actions." Order [Staying Actions], Ahdoot Decl., Exh. 2).

[5] Excluded from the Class are: (a) Barbara's Bakery's board members or executive-level officers, including its attorneys; (b) persons who purchased the Eligible Products primarily for the purpose of resale; (c) retailers or re-sellers of the Eligible Products; (d) governmental entities; (e)

[Footnote continued on next page]

Settlement Agmt., § II.A.11 (Dkt. 37). "Eligible Products" include a wide array of Defendant's Cereals, Cereal Bars, Granola Bars, Cheese Puffs, Baked Cheese Puffs, Snackimals Animal Cookies, Organic Mini-Cookies, Snack Mixes, and Crackers. *Id.* at § II.A.17. The "Class Period" is the period from May 23, 2008, up to July 5, 2013 (the date of the first dissemination of the Summary Settlement Notice or Class Notice). *Id.* at § II.A.15.

B. Monetary Relief to Settlement Class Members

1. The Settlement Fund and Payments to Class Members

Under the Settlement, Defendant will create a $4 million non-revertible fund (the "Settlement Fund") for the benefit of the Class. *Id.* at §§ II.A.30, IV.[6] Class Members are eligible to receive an amount of up to $100, depending on the amount a particular Class Member spent on Eligible Products, and depending on the number of Class Members who submit valid Claims.[7] *Id.* at § IV.C. If the total amount of eligible and approved claims exceeds the total amount available for distribution, then each claim will be proportionately reduced. *Id.* at § IV.D.1.

To obtain the cash payment, Class Members need only return a simple Claim Form. The Claim Form requires the Class Member to provide his or her name, address, and to attest to the

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[Footnote continued from previous page]
persons who timely and properly exclude themselves from the Class as provided in the Agreement; (f) persons who purchased the Eligible Products via the Internet or other remote means while not residing in the United States; and (g) the Court, the Court's immediate family, and Court staff.

[6] The Settlement Fund will be used to pay Class Members claims after deductions for costs of notice and administration, which are estimated to be $786,350 and cannot exceed $875,000 (Wheatman Decl., ¶ 53); an incentive award to Plaintiff not to exceed $2,500; and attorneys' fees and costs not to exceed 25% of the Settlement Fund. Settlement Agmt., §§ IV.A, IV.C. (Dkt. 37).

[7] Specifically, Class Members are entitled to the following amounts:

CLASS MEMBERS WHO SPENT:	COULD RECEIVE A MAXIMUM OF:
More than $100.00	$100.00
$75.01 to $100.00	$75.00
$50.01 to $75.00	$50.00
$25.01 to $50.00	$25.00
$10.01 to $25.00	$10.00
$10.00 or less	$5.00

amount spent on the Eligible Products in accordance with the amounts specified above. *Id*. at §IV.D.1. and Exh. 1 to Settlement Agmt. (Dkt. 37-1). The Claim Form is available either online at a website specifically set up for the Settlement (www.BarbarasBakerySettlement.com) or by U.S. Mail upon request to the Settlement Administrator.

The amounts paid to individual Class Members are designed to provide a substantial recovery that is based on the full retail price of the Eligible Products that Class Members purchased (up to $100), thereby providing generous compensation to claimants as measured by any theory of damages, whether based on a theory of restitution of the full amounts Class Members paid or based on any other theory that would compensate Class Members for a lesser portion of their purchase price.

2. In the Unlikely Event That There Are Residual Settlement Funds, They Will Not Revert to Defendant.

Given the number of claims as of September 27, 2013, *it is highly unlikely that there will be any residual*. However, even if there were a residual, none of the $4 million Settlement Fund would revert to Barbara's Bakery. In the unlikely event any amounts remain in the Settlement Fund after cash payments to Class Members filing claims, notice and administration costs, incentive awards, and attorneys' fees and expenses, they would be distributed pursuant to the *cy pres* doctrine.[8] The *cy pres* funds, if any, will be distributed equally, subject to Court approval and consistent with Ninth Circuit precedent, to Consumers Union and Action for Healthy Kids. Settlement Agmt., §IV.D.2 (Dkt. 37).

Cy pres distributions are appropriate where proof of individual claims is burdensome or distribution of damages costly or where there are unclaimed funds. *Six (6) Mexican Workers v. Ariz. Citrus Growers*, 904 F.2d 1301, 1305 (9th Cir. 1990). "A *cy pres* award must be 'guided by (1) the

[8] As of September 27, 2013, the Settlement Administrator has received 33,199 claims. Wheatman Decl. ¶ 52. The Claim Period is set to remain open until January 1, 2014 (180 days after commencement of Notice). Claims submitted to the Settlement Administrator are still subject to audit. *See, e.g.* Settlement Agmt. §V.A.14. Nonetheless, in light of the number of claims so far and the parameters of claim amounts available to class members (up to a maximum of $100), it is unlikely that any residual funds to be distributed to *cy pres* recipients.

objectives of the underlying statute(s) and (2) the interests of the silent class members,' . . . and must not benefit a group 'too remote from the plaintiff class.'" *Dennis v. Kellogg Co.*, 697 F.3d 858, 865 (9th Cir. 2012) (quoting *Six Mexican Workers*, 904 F.2d at 1308-09); *see also Nachshin v. AOL, LLC*, 663 F.3d 1034, 1039 (9th Cir. 2011). In other words, a *cy pres* remedy "must account for the nature of plaintiffs' lawsuit, the objectives of the underlying statutes, and the interests of the silent class members." *Nachshin*, 663 F.3d at 1036.

The proposed *cy pres* recipients, Consumers Union[9] and Action for Healthy Kids,[10] readily meet this requirement. The *cy pres* recipients will use the excess funds, if any, to further their organizations' goals of protecting consumers from false advertising and promoting consumer protection. The goals provide the "driving nexus between the plaintiff class and the *cy pres* beneficiaries." *Nachshin*, 663 F.3d at 1038. Educating consumers misled by false advertising further fulfills a primary function of state consumer protections laws. *See Consumers Union of U.S., Inc. v. Alta-Dena Certified Dairy*, 4 Cal. App. 4th 963, 975 (1992) ("the power to prevent the use or

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[9] The work of Consumers Union, fighting for accurate labeling and to educate and protect consumers in the marketplace, is directly related to the objectives of the statutes invoked by Plaintiff in this action and anticipated to directly benefit the proposed Class. Odabashian Decl., ¶2 (Dkt. 36-4). The nonprofit organization would use any Settlement Funds to support its mission of protecting consumers from false advertising, as well as meeting the national demand by universities, academic societies and the media for fact-based research, surveys, expert testimony, talks, and panel participation on genetically engineered food. *Id.* at ¶9. *See* Plaintiff's Motion for Preliminary Approval of Class Action Settlement, 5:13-18 and 12:1-7 (Dkt. 36).

[10] The work of Action for Healthy Kids to educate school leaders, public health officials, parents, and students about nutrition, food labeling, and healthy eating habits is directly related to the objectives of the statutes Plaintiff invokes in this action and benefits the proposed Class. Plaintiff alleges that because of the alleged false advertising concerning the ingredients in the Eligible Products, Plaintiff and the putative class were unable to make informed decisions about the food they were purchasing and consuming. Action for Healthy Kids is a national charity that focuses on educating people, including children and their parents, about nutrition and food labeling so that they can make informed decisions about what food to purchase and consume. Because the primary consumers and purchasers of the Eligible Products, which are mostly cereals and snack foods, are children and their parents, charities dedicated to educating children and their parents about nutrition are especially important to the proposed Class. The education work conducted by Action for Healthy Kids will prevent parents and children falling prey to false advertising in the food industry. Haley Decl., ¶¶ 2-12 (Dkt. 36-5). *See* Plaintiff's Motion for Preliminary Approval of Class Action Settlement, 5:19-24 and 12:8-21 (Dkt. 36).

employment of false advertising and unfair business practices [through the UCL] necessarily includes the power to correct false impressions built up by prior advertising, and the power to deter future violations"). Moreover, both organizations work to effectuate nationwide results, thus matching the geographic scope of the nationwide Class. *Dennis*, 697 F.3d at 866.

C. Non-Monetary Relief to Class Members

1. Agreement to Modify Product Labeling and Advertising

In addition to the Settlement Fund, the Settlement puts an end to Barbara's Bakery's alleged deceptive advertising. The Settlement requires Barbara's Bakery to modify the labeling and all advertising of the Eligible Products to exclude claims that the Eligible Products are "all natural" and that they include "no artificial additives," "no artificial preservatives," or "no artificial flavors." Settlement Agmt., §§IV.E.1. - IV.E.4 (Dkt. 37). The Settlement Agreement also prohibits Barbara's Bakery from including similar representations on any other products that it may produce containing GMOs or artificial or synthetic ingredients. *Id.* at §IV.E.1. Finally, Barbara's Bakery will not be permitted to represent that any of its products are free of GMO ingredients, or include the Non-GMO Project Seal on particular product labels, unless it complies with the Non-GMO Project's Product Verification Program with respect to those products. *Id.* The required modifications must take place no later than three months after the Final Settlement Date or March 1, 2014, whichever is later. *Id.* However, Barbara's Bakery has already commenced implementing these modifications, such as amending their website and commencing the relabeling of products. Ahdoot Decl., ¶ 19. In addition, these modifications must remain in place for at least 3 years after the Final Settlement Date. Settlement Agmt., § IV.E.4 (Dkt. 37).

2. Agreement to Eliminate GMO Ingredients from Certain Eligible Products

The Settlement Agreement includes additional relief under which Barbara's Bakery agrees to use reasonable efforts to eliminate the use of GMO ingredients in most of the currently sold Eligible Products and, furthermore, to participate in the Non-GMO Project's Product Verification Program with respect to these products. *Id.* at §§IV.F. This will require Barbara's Bakery to comply with a process-based program designed to assess compliance with the Non-GMO Project Standard,

which is incorporated into the Settlement Agreement as Exhibit No. 10. *Id.* Barbara's Bakery already has brought a significant number of products into compliance. *See, e.g.* Settlement Agmt., §IV.F.1 (Dkt. 37). This is a substantial benefit to the Class. Consumers who choose to avoid foods containing GMO and were allegedly deceived by Defendant's "all natural" labeling into thinking that the Eligible Products did not contain GMOs will now have the option of purchasing Eligible Products that meet the Non-GMO Project's strict standards.

3. The Value of Non-Monetary Consideration Is at Least $3.5 Million — the Cost to Barbara's Bakery

The non-monetary components of the Settlement, including the changes to Barbara's Bakery's labeling practices, manufacturing processes, and its participation in the Non-GMO Project, will cost Barbara's Bakery approximately $1.1 million to implement and are predicted to cost approximately $1.2 million per year going forward. No part of these costs, however, will be paid out of the Settlement Fund. (Rey Decl. ¶3.) The value of this non-monetary relief, over the next 3 years, is at least $3.5 million.

D. Notice and Administration Costs, Attorneys' Fees and Expenses, and Plaintiff Incentive Award

As is typical in common fund settlements, the Settlement Fund will be applied to pay: (i) the notice and claim administration costs; (ii) any attorneys' fees and expenses awarded by this Court; (iii) any incentive award granted to the Plaintiff; and (iv) cash payments to Class Members.

These costs are readily ascertainable. Based on favorable pricing negotiated by Class Counsel, the total cost of class notice and settlement administration to date is $732,792.91 (this expense is estimated to be $786,350, and in no circumstance will exceed $875,000). Wheatman Decl., ¶ 53; Ahdoot Decl., ¶ 15. Further, Plaintiff requests, and Barbara's Bakery has agreed not to oppose, a Court-awarded incentive award to Plaintiff of up to $2,500. Additionally, Class Counsel seeks attorneys' fees and reimbursement for expenses in the total amount of $1,000,000, which equals 25% of the Settlement Fund (or 13.3% of the total value of the Settlement).

IV. THE CLASS NOTICE PROGRAM AND ITS RESULTS.

The Parties developed a notice program with the help of Kinsella Media, LLC ("KM"), a

firm that specializes in developing, design, and implementation of class action notice plans. Wheatman Decl., ¶1. The notice program (detailed in the Declaration of Shannon Wheatman, Ph.D. In Support of Plaintiff's Motion for Preliminary Approval of Class Action Settlement ("Wheatman Prelim. App. Decl."), ¶¶14-37 and exhibits thereto (Dkt. 36-2)) was preliminarily approved by the Court. Preliminary Approval Order at ¶¶9-10. Class Notice was designed to provide broad notice intended to reach as many Class Members as reasonably possible and satisfied due process requirements. Wheatman Decl., ¶¶ 9-14.

The notice program was implemented in accordance with the terms approved by the Court. *Id.* at ¶¶ 11-51. On July 5, 2013 the settlement website (www.BarbarasBakerySettlement.com) went live. *Id.* at ¶ 35. Immediately following the establishment of the website, direct notice was provided to known Class Member via email of the Summary Notice. *Id.* at ¶ 16-19.

The notice program approved by the Court also included a robust Publication Notice program that focused on publishing Notice in targeted periodicals. Publication Notice was designed to provide Class Members with plain language information regarding the Settlement and to inform them about their rights. *Id.* at ¶ 20-32. It included a general description of the lawsuit, the Settlement relief, instructions on how to file a claim, and a general description of Class Members' legal rights. *Id.* at Exh. 2. For more information, the Publication Notice directed Settlement Class Members to the Settlement website or, in the alternative, to a toll-free number they could call for information, and also advised them that they could submit a Claim Form by mail or on-line. *Id.*

Publication Notice appeared in various sources chosen based on market research on the demographics of consumers who purchased the Eligible Products. Wheatman Prelim. App. Decl., ¶¶ 19-25 (Dkt. 36-2). Publication Notice appeared in four nationwide consumer publications chosen because they matched the demographics of the Settlement Class and which have a combined circulation of 23,475,000. *Id.* ¶¶ 23-25; Wheatman Decl., ¶¶ 23.

The Settlement was also publicized through the use of Internet "banner ads." Wheatman Decl., ¶¶ 24-27 and Exh. 3; Wheatman Prelim. App. Decl., ¶¶ 25 (Dkt. 36-2). Banner ads are short, Internet-based advertisements designed to attract attention. Wheatman Decl., ¶ 26. When presented with such an ad, an interested Internet user need only click on the banner ad to be taken directly to

the Settlement website. *Id*. Internet banner ads appeared on the following online networks and websites: 24/7 Real Media Network, Facebook.com, Microsoft Media Network, Specific Media, and Yahoo! Network. These networks are national media networks that allow banner advertisement impressions to be seen on websites like Goodhousekeeping.com, FoxSports.com, BleacherReport.com, Imdb.com, sports.yahoo.com, among many others, from August 1, 2013 to August 31, 2013. *Id.* at ¶¶ 24-25. The banner advertisement campaign is complete and delivered over 183 million impressions, or opportunities for potential Settlement Class Members to click on the banner advertisements and view the Settlement Website. *Id.* at ¶ 27. The Publication Notice and Internet banner media were carefully selected by the Settlement Administrator to reach potential Class Members. Wheatman Prelim. App. Decl., ¶¶ 18-26 (Dkt. 36-2).

The Settlement was also publicized through a press release distributed over PR Newswire's Full National Circuit, reaching approximately 5,000 media outlets and 5,400 websites. Wheatman Decl., ¶¶ 33-34.

The address of the website dedicated to the Settlement appeared on all of the notice pieces, and is hyper-linked where a notice piece appears on the Internet. *Id.* at ¶ 37. The Settlement website provides detailed information about the Settlement, as well as a copy of the Publication Notice, Long-form Class Notice, summary of important dates, a copy of the Settlement Agreement with Exhibits, the Complaint, and the Preliminary Approval Order. *Id.* at ¶ 38. The website allows Class Members to complete and submit a Claim Form online or to download a copy of the Claim Form for mailing to the Settlement Administrator. *Id.* at ¶ 41 and Exh. 6 (Claim Form). In addition, Class Members are advised of their legal rights, including, for example, how to opt-out or object to the Settlement. *Id.* at ¶ 42. The website, including the online Claim Form, was operational as of July 5, 2013. *Id.* at ¶ 43.

Complementing the Publication Notice and Summary Notice is the Long-form Class Notice. *Id.* at Exh. 5. The Class Notice contains detailed information about the lawsuit, the Settlement benefits, the release and how to opt-out, object and exercise other rights under the Settlement. *Id*. The Class Notice is available on the Settlement Website and by request to the Class Action Settlement Administrator. *Id.* at ¶¶ 39-40.

In addition, On July 5, 2013, a toll-free phone number was established, allowing Class Members to call and request that a Notice be mailed to them or listen to frequently asked questions. As of September 27, 2013, there have been 799 calls to the toll free number. *Id.* at ¶ 44.

The details of the Class Notice Program, including the methodology underlying its design, were explained in detail in the Wheatman Preliminary Approval Decl. (Dkt. 36-2). Use of the Internet and traditional methods for publication maximized the effect of the dollars spent to contact the Class. Publication through the Internet had the further advantage of immediately linking the reader to the Settlement Website and the Claim Form.

The data reflect the success of the notice program: As of September 27, 2013, 33,199 Class Members have submitted a Claim. *Id.* at ¶ 52.

V. THE COURT SHOULD GRANT FINAL APPROVAL OF THE PROPOSED SETTLEMENT

The proposed Settlement is fair, reasonable, and adequate and reflects careful consideration by both Parties of the benefits, burdens, and risks associated with continued litigation of this action. Accordingly, the Parties respectfully submit that this Court should grant final approval of their Stipulation of Settlement and order that relief be given to the Class.

Pursuant to Rule 23(e), after directing notice to all class members in a reasonable manner and prior to granting final approval of a proposed settlement, the court must conduct a fairness hearing and determine whether the settlement terms are "fair, reasonable, and adequate." Fed. R. Civ. P. 23(e)(2); *Officers for Justice v. Civil Service Comm'n*, 688 F.2d 615, 625 (9th Cir. 1982), *cert. denied*, 459 U.S. 1217, 103 S. Ct. 1219, 75 L. Ed. 2d 456 (1983); *see generally, Manual for Complex Litigation (Fourth)* §21.62 (2004) ("Rule 23(e)(1)(C) establishes that the settlement must be fair, reasonable, and adequate."); 4 Herbert B. Newberg, *et al.*, *Newberg On Class Actions* §11:41. Strong judicial policy favors settlement of class actions. *Class Plaintiffs v. Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992). Indeed, "voluntary conciliation and settlement are the preferred means of dispute resolution." *Officers for Justice*, 688 F.2d at 625. Class action suits readily lend themselves to compromise because of the difficulties of proof, the uncertainties of the outcome, and the typical length and size of the litigation. *Id.*; *see also Van Bronkhorst v. Safeco Corp.*, 529 F.2d

943, 950 (9th Cir. 1976) ("[T]here is an overriding public interest in settling and quieting litigation. This is particularly true in class action suits . . . ."). Further, a decision "to approve or reject a settlement is committed to the sound discretion of the trial judge because he is exposed to the litigants, and their strategies, positions, and proof." *In re Mengo Fin. Corp. Sec. Litig.*, 213 F.3d 454, 458 (9th Cir. 2000) (citation omitted).

Several non-exhaustive factors are universally recognized as guideposts to the "fair, adequate and reasonable" determination: (1) the strength of plaintiff's case; (2) the risk, expense, complexity, and likely duration of further litigation; (3) the risk of maintaining class action status throughout the trial; (4) the amount achieved or recovered in resolution of the action; (5) the extent of discovery completed, and the stage of the proceedings; (6) the experience and views of counsel; and (7) the reaction of the class members to the proposed settlement. *Class Plaintiffs*, 955 F.2d at 1291; *Officers for Justice*, 688 F.2d at 625. The court should give a presumption of fairness to arm's-length settlements reached by experienced counsel. *Rodriguez v. West Pub'g Corp.*, 563 F.3d 948, 965 (9th Cir. 2009) ("We put a good deal of stock in the product of an arms-length, non-collusive, negotiated resolution[.]"); *Garner v. State Farm Mut. Auto. Ins. Co.*, No. CV 08 1365 CW (EMC), 2010 U.S. Dist. LEXIS 49477, *35 (N.D. Cal. Apr. 22, 2010) ("Where a settlement is the product of arms-length negotiations conducted by capable and experienced counsel, the court begins its analysis with a presumption that the settlement is fair and reasonable."). Each of these relevant factors fully supports approval of this Settlement.

A. The Settlement Was Reached After Serious, Informed, and Non-Collusive Arms-Length Negotiations and Mediation

The settlement was reached after arms-length negotiations and was guided by the wisdom of an experienced and impartial mediator. Settlements that are the product of such negotiations are considered presumptively fair and reasonable. *Id.*; *see also In re Immune Response Sec. Litig.*, 497 F. Supp. 2d 1166, 1171 (S.D. Cal. 2007) ("[T]he fact that the settlement agreement was reached in arm's length negotiations after relevant discovery [has] taken place create[s] a presumption that the agreement is fair.") (*quoting Linney v. Cellular Alaska P'ship*, No. C-96-3008 DLJ, 1997 U.S. Dist. LEXIS 24300, at *16 (N.D. Cal. July 18, 1997), *aff'd*, 151 F.3d 1234 (9th Cir. 1998) (alterations in

original)).

Here, Counsel for Defendant and Plaintiff conducted diligent and often spirited negotiations to reach this Settlement. Ultimately, the parties agreed upon a traditional common fund settlement, after two separate mediations with the Honorable Eugene F. Lynch of JAMS in San Francisco, California on November 28, 2012 and January 11, 2013. Ahdoot Decl., ¶ 14. Although the Parties did not reach a final resolution at these mediations, they were able to agree on the principal deal points in the second mediation. *Id.* The Parties then launched into the process of negotiating the language and numerous details of the Settlement Agreement. For approximately three and a half months following the last formal mediation session, the Parties negotiated over details of the Settlement, including significant sticking points with respect to the amount of relief an individual claimant could receive, the Notice Program, the scope of the non-monetary terms of the settlement, the scope of the release, and the proposed *cy pres* recipients, among a host of other issues. *Id.* at ¶ 15. The settlement process was kept moving by the Court's scheduled conferences and deadlines. *See e.g.*, Dkt. Nos. 26, 31, and *Clerk's Notice* (filed April 25, 2013).

These facts, along with the involvement of an extremely knowledgeable and experienced mediator (Judge Eugene F. Lynch (Ret.)), demonstrate the Settlement was anything but collusive. *See, e.g., Chun-Hoon v. McKee Foods Corp.*, 716 F. Supp. 2d 848, 852 (N.D. Cal. 2010) ("The arms-length negotiations, including a day-long mediation before Judge Lynch, indicate that the settlement was reached in a procedurally sound manner."); *Anderson v. Nextel Retail Stores, LLC*, No. CV 07–4480–SVW (FFMx), 2010 U.S. Dist. LEXIS 43377, at *44 (C.D. Cal. Apr. 12, 2010) ("Because the present agreement was reached through arms-length negotiation between experienced parties whose negotiations were overseen by an experienced mediator, it is entitled to a presumption of fairness.").

The substantial involvement and assistance of a highly qualified mediator, the nature of the subsequent negotiations between the Parties, and the experience of Class Counsel and Defendant's Counsel as longstanding class action attorneys, are all illustrative of the arms-length negotiation that led to the Settlement. Accordingly, final approval of the Stipulation of Settlement is warranted.

B. The Risk, Complexity, Expense, and Duration of Continuous Litigation Favor Final Approval

Settlements resolve inherent uncertainty on the merits of litigation, and are therefore strongly favored by the courts, particularly in class actions. *See Van Bronkhorst*, 529 F.2d at 950; *Officers for Justice*, 688 F.2d at 625. Assuming litigation were to proceed, the hurdles Plaintiff faced prior to certification and trial are substantial. Although Plaintiff is confident of his deceptive advertising claims against Barbara's Bakery, Plaintiff must balance the perceived strength of the Class claims against the undeniable risks of continuing litigation. Class certification itself always poses a significant risk.

Absent settlement, Barbara's Bakery would undoubtedly mount a strong opposition to the certification of any proposed class, and certification may require a "battle of the experts" on issues such as materiality of the allegedly false messages. If a class was certified, the risk of decertification would exist. *See, e.g. In re Vivendi Universal S.A. Sec. Litig.*, 765 F. Supp. 2d 512 (S.D.N.Y. 2011).

Further, if the case proceeded to the merits Barbara's Bakery would of course argue that its claims on the product labeling are not deceptive or misleading. Plaintiff would argue otherwise resulting in another battle of the experts on the legitimacy of the claims challenged by this case. In addition, Plaintiff would be required to prove both his theory and calculations of recoverable damages with the help of expert testimony.

Defendant also would likely argue that its advertising constituted mere puffery. *See Edmunson v. P&G*, No. 10-CV-2256-IEG (NLS) 2011 U.S. Dist. LEXIS 102561, *4-8 (S.D. Cal. Sep. 8, 2011) (finding as a matter of law razor manufacturer's advertisements about closeness and comfort of blade to be mere puffery).

Barbara's Bakery has denied and continues to deny all of the claims and contentions alleged by Plaintiff. Litigating this class action through trial would be time-consuming and expensive with an uncertain result. The questions of whether Barbara's Bakery has sufficient substantiation for its challenged claims, and the amount of any damages, would require analysis by experts for both Parties. In this type of case, the Parties typically utilize marketing, consumer behavior, and

damages experts in addition to any scientific experts engaged. At trial, yet another battle of the experts would ensue on these issues.

Even if Plaintiff overcomes all obstacles and obtains a judgment for the Class, the recovery might be of no greater value to Class Members, and indeed might be substantially less valuable, than the proposed settlement. Moreover, Barbara's Bakery would likely appeal. Thus, even in the best case, it could take years to get relief for Class Members. There is a significant advantage of receiving a benefit now as opposed to later. *See Officers for Justice*, 688 F.2d at 625; *Marshall v. Holiday Magic, Inc.*, 550 F.2d 1173, 1178 (9th Cir. 1977).

In addition to the substantial risks and uncertainty inherent in continued litigation, the Parties face the certainty that further litigation would be expensive, complex, and time consuming. The expense, complexity and duration of litigation are significant factors considered in evaluating the reasonableness of a settlement. *Churchill Village, LLC v. Gen. Elec.*, 361 F.3d 566, 576 (9th Cir. 2004). The Settlement here provides Class Members with significant benefits without the risk and delay of continued litigation, trial and appeal. In contrast, the measure of damages or restitution, either complete refunds or the difference in the price of the Eligible Products as advertised versus as received, would not be known until after the evidence was presented at trial. The challenge of proving damages could result in a very small recovery.

At minimum, absent settlement, this Action would likely continue for years before Plaintiff or the Class would see any recovery. That a settlement would eliminate the delay and expenses strongly weighs in favor of approval. *See id.*; *Milstein v. Huck*, 600 F. Supp. 254, 267 (E.D.N.Y 1984).

By reaching this Settlement, the Parties will avoid protracted litigation and will establish a means for prompt resolution of Class Members' claims. The avenue of relief provided by the Settlement ensures meaningful benefits to Class Members. Given the alternative of long and complex litigation before this Court, the risks involved in such litigation, including the possibility of further appellate litigation, the availability of prompt relief under the Settlement is highly beneficial to the Class and favors final approval.

C. The Substantial Relief Provided by the Settlement Favors Final Approval

The Settlement provides real relief to the Class. It provides Class Members with a significant refund of the full price of the Eligible Products for all purchases during the Class Period up to $100 — recovery that could exceed the amount a Claimant would receive if the case were tried (as Defendant would argue that Class Members were not damaged because they received the product paid for). Class Members' ability to recoup funds spent on the Eligible Products is not limited by or dependent on their ability to provide proof of purchase. And, none of this value reverts to Barbara's Bakery; in one way or another, the entire Settlement inures to the benefit of the Class. The substantial relief afforded by the Settlement weighs in favor of final approval.

The Settlement specifically addresses the alleged deceptive practices and provides carefully tailored economic benefits to all Class Members who submit valid claims. Class Members can claim a refund for the Eligible Purchases depending on the amount of their purchases during the Class Period. Settlement Agmt., § IV.B. (Dkt. 37). The potential cash payment to represents the approximate full purchase price of the Eligible Products.[11] This alone makes it an exceptional recovery because in false advertising cases the restitutionary relief available if the case were to proceed to trial may be limited to the difference in value of the product as advertised compared to the value of the product received. *In re Vioxx Class Cases*, 180 Cal. App. 4th 116, 131 (2009) ("[t]he difference between what the plaintiff paid and the value of what the plaintiff received is a proper measure of restitution.") (citation omitted).

In addition, finely tailored non-monetary relief remedies the very alleged wrongful conduct at issue: false advertising. Further, the agreement to switch to non-GMO ingredients is ***more*** than Class Counsel could have achieved through trial.

In evaluating this factor, courts should not substitute their own judgment for the negotiated

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[11] For example, based on the number of claims to date, Class Members' recovery would range from approximately $77.89 for those who declared that they spent $100 or more (maximum possible compensation $100) to approximately $3.89 for those who declared that they spent $10 or less (maximum possible compensation $5) (assuming deductions for notice and administration costs at $786,350, incentive award at $2,500, and attorneys' fees and costs at $1,000,000). Ahdoot Decl., ¶¶ 21-22.

resolution of the parties. The issue is not whether the settlement could have been better in some fashion, but whether it is fair: "Settlement is the offspring of compromise; the question we address is not whether the final product could be prettier, smarter or snazzier, but whether it is fair, adequate and free from collusion." *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1027 (9th Cir. 1998). "'[T]he court's intrusion upon what is otherwise a private consensual agreement negotiated between the parties to a lawsuit must be limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned.'" *Id.* (quoting *Officers for Justice*, 688 F.2d at 625); *accord Rodriguez*, 563 F.3d at 965.

The Settlement provides substantial benefit to the Class, especially when compared with the risks of further litigation. This factor weighs in favor of approving the Settlement.

D. The Extent of Discovery and Stage of the Proceedings Favors Approval

When litigation has proceeded to the point where the parties have a "clear view of the strengths and weaknesses of their cases," this factor supports approval of a settlement. *Chun-Hoon*, 716 F. Supp. 2d at 852; *Young v. Polo Retail, LLC*, No C-02-4546 VRW, 2007 U.S. Dist. LEXIS 27269, *12 (N.D. Cal. Mar. 28, 2007) (citation omitted). Class Counsel independently began investigating the alleged deceptive advertising for months before filing this action. Ahdoot Decl., ¶¶ 3-4. Class Counsel reviewed and analyzed Defendant's advertising and labeling, retained a consulting expert who assisted in understanding the scientific issues and in evaluating the veracity of Defendant's advertising claims, and conducted an independent investigation of the scientific and factual basis for the advertising of Defendant's products. *Id.* Class Counsel also conducted extensive discovery in the litigation. In total, Plaintiff obtained and reviewed over thirty (30) banker's boxes of documents and approximately seventy (70) Gigabytes (GB) of data through discovery, which concerned: (i) label design and product formulation; (ii) marketing, advertising, media, and public relations; and (iii) financial information. *Id.* at ¶ 9. In addition, Class Counsel conducted interviews of primary Barbara's Bakery's corporate witnesses who have been involved with the Eligible Products to address the following subjects: (i) sales and marketing; (ii) labeling;

(iii) finance; (iv) document collection and retention; and (v) Barbara's Bakery's efforts to eliminate GMO ingredients from its products. *Id.* at ¶ 10.

Equipped with this information, the Parties were able to make a clear assessment of their claims and the likelihood of success on the merits. The litigation had, without doubt reached the stage at which the Parties have a clear view of the strengths and weaknesses of their cases, prior to reaching compromise.

E. The Experience and Views of Counsel Favor Approval

Courts recognize that the opinions of experienced counsel supporting a settlement, especially after vigorous arm's-length negotiations, are entitled to considerable weight. *Churchill Village*, 361 F.3d at 576 (giving this factor significant consideration); *In re NVIDIA Corp. Derivative Litig.*, 2008 WL 5382544 at *4 (N.D. Cal. 2008) ("[s]ignificant weight should be attributed to counse's belief that settlement is the best interest of those affected by the settlement."); *Ellis v. Naval Air Rework Facility*, 87 F.R.D. 15, 18 (N.D. Cal. 1980), *aff'd*, 661 F.2d 939 (9th Cir. 1981) ("[T]he fact that experienced counsel involved in the case approved the settlement after hard-fought negotiations is entitled to considerable weight."). In this litigation, the experience and views of Class Counsel, who specialize in consumer fraud and false advertising class actions, strongly favors final approval.

Class Counsel are experienced class action litigators with a history of success in similar false advertising litigation. Ahdoot Decl., ¶¶ 40-54. Class Counsel worked diligently to secure the best possible result for the Class and Class Counsel's views and recommendations concerning the Settlement are the product of thorough analysis and consideration of the issues and risks of continued litigation. Class Counsel believes the results achieved by the Settlement are eminently fair, adequate and reasonable. *Id.* at ¶ 23.

The Court should also consider the skill and competence of opposing counsel who negotiated the Settlement. *See, e.g., In re Equity Funding Corp. Sec. Litig.*, 438 F. Supp. 1303, 1337 (C.D. Cal. 1977) (noting that Class Counsel faced "established and skillful defense lawyers"). A team of very experienced and talented attorneys represents Barbara's Bakery from the firm of Glynn & Finley, LLP, a firm skilled in class action defense. Clement L. Glynn, a very well known,

respected, and accomplished attorney with 40 years of experience, headed the Glynn & Finley team. *See, e.g.* www.glynnfinley.com/attorneys/clement-l-glynn (last visited September 30, 2013).

F. The Reaction of the Class Members Favors Final Approval

Courts have likewise recognized that a favorable reaction by class members to the proposed settlement strongly supports final approval. *See Chun-Hoon*, 716 F. Supp. 2d at 852 ("The reaction of class members to the proposed settlement, or perhaps more accurately the absence of a negative reaction, strongly supports settlement."). Class members must be allowed the opportunity to review and object to both the preliminary notice of settlement and plaintiff's application for attorneys' fees prior to final approval. *See In re Mercury Interactive Corp. Sec. Litig.,* 618 F.3d 988, 993-94 (9th Cir. 2010).

Though the opt out and objection deadline is not for another two weeks (October 14, 2013), the reaction of Class Members so far is overwhelmingly positive. As of September 27, 2013, only one Class Member has opted out of the Settlement and there have been no objections. *See* Wheatman Decl., ¶ 52. Further, as of September 27, 2013, there have been 33,199 claims made to the Settlement Fund. *Id.*

The response of the members of the class to date strongly supports certification. *See, e.g.*, *Churchill Village, LLC*, 361 F.3d at 577 (affirming approval of a class action settlement where 45 objections were received out of 90,000 notices); *Galluci v. Boiron, Inc.*, No. 11-CV-2039, 2012 U.S. Dist. LEXIS 157039, at *19 (S.D. Cal. Oct. 31, 2012) ("The response of the Class to this action, the certification of a class, and the Settlement . . . strongly favors final approval of the Settlement. Out of the estimated millions who received Notice . . . only two class members submitted valid requests for exclusion. Moreover, only three Objections were filed."); *Garcia v. Gordon Trucking, Inc.*, No. 10-CV-0324, 2012 U.S. Dist. LEXIS 160052, at *14, 17, 19 (E.D. Cal. Oct. 31, 2012) (no objections and less than 1% of the class electing to opt out weighed in favor of final approval and the adequacy of the amount offered in settlement); *Chun-Hoon*, 716 F. Supp. 2d at 852 (granting final approval where "[a] total of zero objections and sixteen opt-outs (comprising 4.86% of the class) were made from the class of roughly three hundred and twenty-nine (329) members"); *Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 529 (C.D. Cal.

2004) ("[T]he absence of a large number of objections to a proposed class action settlement raises a strong presumption that the terms of a proposed class settlement action are favorable to the class members"). Any objections filed by the objection deadline will be addressed in Plaintiff's reply memorandum.

In sum, the Settlement is the product of mediated negotiations between the parties, fully informed of the relative strengths and weaknesses of their claims and defenses. The Settlement is fair, adequate and reasonable, and warrants final approval under Rule 23(e).

VI. THE CLASS SHOULD BE CERTIFIED FOR SETTLEMENT PURPOSES

Plaintiff requests certification of the following Settlement Class:

> All persons who, during the Class Period, purchased in the United States any of the Eligible Products. Excluded from the Class are: (a) Barbara's Bakery's board members or executive-level officers, including its attorneys; (b) persons who purchased the Eligible Products primarily for the purpose of resale; (c) retailers or re-sellers of the Eligible Products; (d) governmental entities; (e) persons who timely and properly exclude themselves from the Class as provided in the Agreement; (f) persons who purchased the Eligible Products via the Internet or other remote means while not residing in the United States; and (g) the Court, the Court's immediate family, and Court staff.

Settlement Agmt., §II.11. (Dkt. 37). The term "Eligible Products" is defined by a specific list of Barbara's Bakery Products. *Id.* at §II.17.

The Ninth Circuit authorizes certification of a settlement class to resolve consumer protection lawsuits. *Hanlon*, 150 F.3d at 1019. When presented with a proposed settlement, a court must first determine whether the proposed settlement class satisfies the requirements for class certification under Rule 23 of the Federal Rules of Civil Procedure. *Id.* Where a court is evaluating the certification question in the context of a proposed settlement class, questions regarding the manageability of the case for trial purposes are not considered. *Amchem Products, Inc. v. Windsor*, 521 U.S. 591, 620 (1997) ("Confronted with a request for settlement-only class certification, a district court need not inquire whether the case, if tried, would present intractable management problems . . . for the proposal is that there be no trial.")

Here, certification of the Settlement Class is appropriate for purposes of settlement because all of the requirements of Rule 23 are satisfied.

A. The Settlement Class Satisfies the Requirements of Federal Rule of Civil Procedure 23(a)

Rule 23(a) enumerates four prerequisites for class certification: (1) numerosity; (2) commonality; (3) typicality; and (4) adequacy. The Plaintiff submits that each of these requirements is easily satisfied here.

1. Numerosity

Rule 23(a)(1) requires that "the class is so numerous that joinder of all members is impracticable." Fed. R. Civ. P. 23(a); *Hanlon*, 150 F.3d at 1019. Here, the numerosity requirement is readily met because joinder of absent class members would be exceedingly difficult. *See Harris v. Palm Springs Alpine Estates, Inc*., 329 F.2d 909, 913-14 (9th Cir. 1964). Barbara's Bakery is a nationwide manufacturer of foodstuffs, including the Eligible Products. At the very least, tens of thousands of purchases were made during the Class Period. Ahdoot Decl. ¶ 11; 4 Herbert B. Newberg, *et al.*, *Newberg On Class Actions*, §3.3 (Where "the exact size of the class is unknown, but general knowledge and common sense indicates that it is large the numerosity requirement is satisfied."); *see also Beck-Ellman v. Kaz USA, Inc*., 283 F.R.D. 558, 564 (S.D. Cal. 2012) ("In determining whether numerosity is satisfied, the Court may consider reasonable inferences drawn from the facts before it."); *Mathias v. Smoking Everywhere, Inc.*, 2:09-cv-03434-GEB, 2011 U.S. Dist. LEXIS 121687, at *4 (E.D. Cal. Oct. 20, 2011) (finding numerosity was satisfied where the plaintiffs' "calculations support[ed] the inference that the class contains at least 600 individuals"). As reported above, 33,199 Class Members have submitted claims to the Settlement Administrator as of September 27, 2013. Accordingly, the numerosity requirement is met.

2. Commonality

"Commonality requires the plaintiff to demonstrate that the class members 'have suffered the same injury' . . . Their claims must depend upon a common contention . . . That common contention, moreover, must be of such a nature that it is capable of class wide resolution — which means that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke." *Walmart Stores, Inc. v. Dukes*, ____ U.S. _____, 131 S. Ct. 2541, 2551 (2011). Still, "[t]he existence of shared legal issues with divergent factual predicates is

sufficient [to satisfy commonality], as is a common core of salient facts coupled with disparate legal remedies within the class." *Hanlon*, 150 F.3d at 1019; *see also In re First Alliance Mortg. Co.*, 471 F.3d 977, 990-91 (9th Cir. 2006) ("[T]his court has followed an approach that favors class treatment of fraud claims stemming from a 'common course of conduct.'") (quoting *Blackie v. Barrack*, 524 F.2d 891, 902 (9th Cir. 1975)). This is because the commonality requirement is construed "permissively." *Hanlon*, 150 F.3d at 1019; *Zeisel v. Diamond Foods, Inc.*, No. C 10-01192, 2011 U.S. Dist. LEXIS 60608, *24 (N.D. Cal. June 7, 2011).

The commonality element is easily satisfied here because Barbara's Bakery has engaged in standardized conduct, including making identical statements to each Class Member on its product packaging, marketing materials, and website. *Zeisel*, 2011 U.S. Dist. LEXIS 60608, *1-4; *see also Johnson v. General Mills, Inc.*, 275 F.R.D. 282, 287 (C.D. Cal. 2011) (plaintiff's claims presented common, core issues of law and fact, including "whether General Mills communicated a representation . . . that YoPlus promoted digestive health" and "whether YoPlus does confer a digestive health benefit that ordinary yogurt does not").

Here, Class Members' claims necessarily involve common questions of law and fact. Plaintiff's allegations focus on a singular advertising claim appearing on all of the Product labels during the Class Period. Whether the claim was false or misleading presents a common, salient issue sufficient to satisfy the Rule 23(a) commonality requirement. *See Zeisel*, 2011 U.S. Dist. LEXIS 60608, *1-4, 24-25 (finding commonality requirement satisfied where alleged misrepresentations appeared on product packaging).

3. Typicality

Rule 23(a)(3) typicality is satisfied where the Plaintiff's claims are "reasonably co-extensive" with absent Class Members' claims; they need not be "substantially identical." *Hanlon*, 150 F.3d at 1020. The test for typicality "is whether other members have the same or similar injury, whether the action is based on conduct which is not unique to the named plaintiffs, and whether other class members have been injured by the same course of conduct." *Hanon v. Dataproducts Corp.*, 976 F.2d 497, 508 (9th Cir. 1992) (citation omitted). Thus, "[t]he purpose of the typicality requirement is to assure that the interest of the named representative aligns with the interests of the

class." *Id.* For example, in *Keilholtz v. Lennox Health Prods., Inc.*, 268 F.R.D. 330, 338 (N.D. Cal. 2010), in certifying UCL and CLRA claims, the court found that the typicality requirement was satisfied because: "Plaintiffs' claims are all based on Defendants' sale of allegedly dangerous fireplaces without adequate warnings."

Plaintiff is typical because he and the proposed Class assert the same claim and seek the same remedy arising from the same course of conduct — Barbara's Bakery uniform, allegedly deceptive marketing campaign. Plaintiff and Class Members were all exposed to the same alleged misrepresentations, suffered similar damages as a result of the alleged misrepresentation, and seek relief for the same alleged conduct. Plaintiff's claims are identical to those of the Class. Therefore, the typicality requirement is met.

4. Adequacy of Representation

Rule 23(a)(4) requires that "the representative parties will fairly and adequately protect the interests of the class." Adequacy is satisfied where (i) counsel for the class is qualified and competent to vigorously prosecute the action, and (ii) the interests of the class representatives are not antagonistic to the interests of the Class. *See, e.g., Staton v. Boeing*, 327 F.3d 938, 957 (9th Cir. 2003); *Hanlon*, 150 F.3d at 1020. The adequacy requirement is met here. The interests of Plaintiff and Class Members are fully aligned and conflict free. Further, Class Counsel are qualified and experienced in conducting class action litigation. Ahdoot Decl., ¶¶ 40-54; *see also In re Emulex Corp. Sec. Litig.*, 210 F.R.D. 717, 720 (C.D. Cal. 2002) ("In evaluating the adequacy of attorneys representing the class, a court may examine the attorneys' professional qualifications, skill, experience, and resources . . . [and] the attorneys' demonstrated performance in the suit itself."). Class Counsel have thoroughly and efficiently identified and investigated the claims in this lawsuit and the facts that support those claims. *See generally* Ahdoot Decl. Class Counsel ably navigated this litigation to a highly favorable resolution for Class Members. Accordingly, the interests of the Class have been adequately protected.

B. The Class Should Be Certified Under Federal Rule of Civil Procedure 23(b)(3)

Plaintiff seeks certification of a Class under Rule 23(b)(3). Certification under Rule 23(b)(3)

is appropriate "whenever the actual interests of the parties can be served best by settling their difference in a single action." *Hanlon*, 150 F.3d at 1022 (quoting 7A Wright & Miller, *Federal Practice & Procedure* § 1777 (2d ed. 1986)). There are two fundamental conditions to certification under Rule 23(b)(3): (1) questions of law or fact common to the members of the class predominate over any questions affecting only individual members; and (2) a class action is superior to other available methods for the fair and efficient adjudication of the controversy. Fed. R. Civ. P. 23(b)(3); *see also Local Joint Exec. Bd. of Culinary/Bartender Trust Fund v. Las Vegas Sands, Inc.*, 244 F.3d 1152, 1162-63 (9th Cir. 2001); *Hanlon*, 150 F.3d at 1022. Rule 23(b)(3) encompasses those cases "in which a class action would achieve economies of time, effort, and expense, and promote . . . uniformity of decision as to persons similarly situated, without sacrificing procedural fairness or bringing about other undesirable results." *Amchem*, 521 U.S. at 615 (citations omitted) (alterations in original). The proposed Settlement Class meets each of these requirements.

1. Common Questions Predominate Over Individual Issues

The Rule 23(b)(3) predominance inquiry "tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation." *Amchem*, 521 U.S. at 623. "Predominance is a test readily met in certain cases alleging consumer . . . fraud . . . ." *Id.* at 625. "When common questions represent a significant aspect of the case and they can be resolved for all members of the class in a single adjudication, there is clear justification for handling the dispute on a representative rather than on an individual basis." Wright & Miller, Fed. Prac. & Proc. § 1778 (3d ed.). The predominance requirement is satisfied here. Plaintiff alleges that Class Members are entitled to the same legal remedies based on the same alleged wrongdoing — exposure to the same misrepresentation. The central issues for each Class Member are (1) whether Barbara's Bakery had substantiation for its claim that its products were "All Natural" or free of artificial additives, flavors, or preservatives, and (2) whether that alleged misrepresentation was likely to deceive a reasonable consumer. *See Johns v. Bayer Corp.*, 280 F.R.D. 551, 558 (S.D. Cal. 2012) ("[W]hen plaintiffs are exposed to a common advertising campaign, common issues predominate."); *Hartless v. Clorox Co.*, 273 F.R.D. 630, 638-39 (S.D. Cal. 2011) (predominance established where all class members were exposed to the same alleged misrepresentations). These issues predominate

and are the "heart of the litigation" because they would be decided in every trial brought by individual Class Members and can be proven or disproven with the same evidence.

Under these circumstances, there is sufficient basis to find that common issues predominated under Rule 23(b)(3).

2. A Class Action is the Superior Method to Settle This Controversy

Rule 23(b)(3) sets forth the relevant factors for determining whether a class action is superior to other available methods for the fair and efficient adjudication of the controversy. These factors include: "(A) the class members' interest in individually controlling separate actions; (B) the extent and nature of any litigation concerning the controversy already begun by or against class members; (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and (D) the likely difficulties in managing a class action." Fed. R. Civ. P. 23(b)(3). Where "the alternative methods of resolution are individual claims for a small amount of consequential damages or . . . replacement," the superiority requirement is met. *Hanlon*, 150 F.3d at 1023.

Application of Rule 23(b)(3)'s superiority factors shows that a class action is the preferred procedure for this Settlement. The amount of damage to which an individual Class Member would be entitled is small. It is neither economically feasible, nor judicially efficient, for the numerous Class Members to pursue their claims against Barbara's Bakery on an individual basis. *Deposit Guar. Nat'l Bank v. Roper*, 445 U.S. 326, 338-39 (1980); *Hanlon*, 150 F.3d at 1023; *Vasquez v. Superior Court*, 4 Cal. 3d 800, 808 (1971). Under the circumstances presented here, a class action is clearly superior to any other mechanism for adjudicating the case. The requirements of Rule 23(b)(3) are satisfied.

VII. NOTICE TO THE SETTLEMENT CLASS SATISFIED THE REQUIREMENTS OF DUE PROCESS

The notice provided to the Class was adequate and satisfies Rule 23 and all other due process requirements. Rule 23 requires that "the court . . . direct to class members the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort." Fed. R. Civ. P. 23(c)(2)(B). While actual notice is not

required, the notice must be reasonably calculated to apprise the Class of the pendency of the settlement and afford them an opportunity to present their objections or opt-out. *Eisen v. Carlisle & Jacqueline*, 417 U.S. 156, 173 (1974); *Mullane v. Cent. Hanover Bank & Trust Co*., 339 U.S. 306, 315 (1950). The threshold requirement concerning the sufficiency of class notice is whether the means employed to distribute the notice is reasonably calculated to apprise the class of the pendency of the action, of the proposed settlement, and of the class members' rights to opt out or object. *Eisen*, 417 U.S. at 173-74; *Mullane,* 339 U.S. at 315. The mechanics of the notice process are best left to the discretion of the court, subject only to the broad "reasonableness" standards imposed by due process. *Lo v. Oxnard European Motors, LLC*, No. 11CV1009 JLS (MDD), 2011 U.S. Dist. LEXIS 144490, at *21 (S.D. Cal. Dec. 15, 2011) (citation omitted).

In this circuit, it has long been the case that notice of settlement will be adjudged "satisfactory if it 'generally describes the terms of the settlement in sufficient detail to alert those with adverse viewpoints to investigate and to come forward and be heard.'" *Churchill*, 361 F.3d at 575 (quoting *Mendoza v. United States*, 623 F.2d 1338, 1352 (9th Cir. 1980)); *Hanlon*, 150 F.3d at 1025 (notice should provide absent class members with the opportunity to opt-out and individually pursue any remedies that might provide a better opportunity for recovery). The notice should also present information "neutrally, simply, and understandably," including "describ[ing] the aggregate amount of the settlement fund and the plan for allocation." *Rodriguez*, 563 F.3d at 962.

The Class Notice disseminated in this action — collectively the long form Notice of Class Action Settlement and the Summary/Publication Notice — satisfied these content requirements. *See* Wheatman Decl., Exh. 2 (Publication Notice), Exh. 4 (Summary Notice), and Exh. 5 (long form notice). The Class Notice was written in simple, straightforward language and included: (1) basic information about the lawsuit; (2) a description of the benefits provided by the Settlement; (3) an explanation of how Class Members can obtain Settlement benefits; (4) an explanation of how Class Members can exercise their right to opt-out or object to the Settlement; (5) an explanation that any claims against Barbara's Bakery that could have been litigated in this action will be released if the Class Member does not opt out from the Settlement; (6) the name of Class Counsel and information regarding attorneys' fees and expenses, and Plaintiff's incentive awards; (7) the Settlement Hearing

date; (8) an explanation of eligibility for appearing at the Settlement Hearing; and (9) the Settlement Website and a toll free number where additional information may be obtained. Wheatman Decl., Exh. 5. The Class Notice also informed Class Members that Plaintiff's final approval brief and request for attorneys' fees would be filed prior to the objection deadline.

Collectively, the Class Notice provided Class Members with sufficient information to make an informed and intelligent decision about the Settlement. It therefore satisfied the content requirements of Rule 23. *See also In re Compact Disc. Minimum Advertised Price Antitrust Litig*., 216 F.R.D. 197, 203 (D. Me. 2003) ("The notice must describe fairly, accurately and neutrally the claims and parties in the litigation, the terms of the proposed settlement, and the options available to individuals entitled to participate, including the right to exclude themselves from the class.").

Additionally, dissemination of the Class Notice satisfied all due process requirements. The Eligible Products are small dollar, over-the-counter retail purchases, and there is no way to easily identify all individual Class Members. Because Barbara's Bakery does not sell the Products directly to consumers, Barbara's Bakery does not have mailing addresses or other contact information for most Class Members. Therefore, the Notice Program included direct notice for some members of the class, it also consisted of publishing the Notice in targeted sources that directed Class Members to various other methods of obtaining the Claim Form. Additionally, Class Notice is available on the Settlement Website and is provided to Class Members who request it via the toll-free number established for this Settlement. The notice plan provided under the Settlement apprised Class Members of the pendency of the action and their right to object or exclude themselves from the Settlement. This Court previously approved the form and manner of notice. Preliminary Approval Order (Dkt. 58). As detailed in the declaration of Shannon Wheatman, Ph.D., the Class Notice Program was executed as previously detailed. *See* Wheatman Decl., ¶¶ 9-51.

VIII. CLASS COUNSEL'S FEE AND EXPENSE APPLICATION SHOULD BE APPROVED

A. Fees and Expenses Totaling 25% of the Settlement Fund Are Reasonable

"[A]litigant or a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund as a whole." *Rodriguez*

v. Disner, 688 F.3d 645, 653 (9th Cir. 2012) (citation omitted). The Ninth Circuit approves "two separate methods for determining attorneys' fees," *i.e.*, the percentage and lodestar/multiplier methods. *Hanlon*, 150 F.3d at 1029. However, federal courts, including the Ninth Circuit, have developed a strong preference for using a percentage of the recovery method. *Six (6) Mexican Workers*, 904 F.2d at 1311; *see also Jones v. GN Netcom, Inc.* (*In re Bluetooth Headset Prods. Liab. Litig.*), 654 F.3d 935, 942 (9th Cir. 2011)) ("Because the benefit to the class is easily quantified in common-fund settlements, we have allowed courts to award attorneys a percentage of the common fund *in lieu* of the often more time-consuming task of calculating the lodestar."). This method recognizes that the efforts of class counsel established the entire settlement, including non-monetary benefits, for the benefit of the entire class. *Masters v. Wilhelmina Model Agency, Inc.*, 473 F.3d 423, 437 (2nd Cir. 2007); *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1049 (9th Cir. 2002) ("Incidental or nonmonetary benefits conferred by the litigation are a relevant circumstance."). The guiding principle is that attorneys' fees "be reasonable under the circumstances." *Rodriguez*, 688 F.3d at 653 (citation omitted).

In the Ninth Circuit, the typical range of acceptable attorneys' fees is 20% to 33 1/3% of the total settlement value, with 25% considered to be the benchmark. *Powers v. Eichen*, 229 F.3d 1249, 1256 (9th Cir. 2000); *see also Hanlon*, 150 F.3d at 1029 ("This circuit has established 25% of the common fund as a benchmark award for attorney fees."); *Six (6) Mexican Workers*, 904 F.2d at 1311; *Rodriguez v. D.M. Camp & Sons*, No.: 1:09-cv-00700 – AWI – JLT, 2013 U.S. Dist. LEXIS 69282, at *34 (E.D. Cal. May 15, 2013) ("In the Ninth Circuit, the typical range of acceptable attorneys' fees is 20% to 33 1/3% of the total settlement value, with 25% considered the benchmark.").

Likewise, California state "[c]ourts recognize two methods for calculating attorney fees in civil class actions: the lodestar/multiplier and the percentage of recovery method." *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 254 (2001); *see also Lealao v. Beneficial Cal., Inc.*, 82 Cal. App. 4th 19, 26 (2000) ("Percentage fees have traditionally been allowed in such common fund cases[.]"); *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1809 (1996) (recognizing that the percentage method is appropriate where "the amount was a 'certain or easily calculable sum of

money.'") (*citing Serrano v. Priest ("Serrano III")*, 20 Cal. 3d 25, 35 (1977)); *Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 65-66 (2008). The key advantage of the percentage method is that it focuses on the benefit conferred on the class resulting from the efforts of counsel. *Lealao*, 82 Cal. App. 4th at 48 ("Courts agree that, because the percentage-of-the-benefit approach 'is result-oriented rather than process-oriented, it better approximates the workings of the marketplace' than the lodestar approach.) (citations omitted). In California state court cases percentages in the range of 25% of the value of the recovery are typical. *Glendale City Employees' Ass'n. v. Glendale*, 15 Cal. 3d 328, 341 n.19 (1975) (approving award of 25% of the recovery); *Sanders v. City of L.A.*, 3 Cal. 3d 252, 261 (1970) (approving award of 25%); *Bell v. Farmers Ins. Exch.*, 115 Cal. App. 4th 715, 726 (2004) (noting fee award of 25%); *Steinberg v. Allstate Ins. Co.*, 226 Cal. App. 3d 216, 220 n.2 (1990) (affirming award of 20% of the common fund); *Parker v. Los Angeles*, 44 Cal. App. 3d 556, 567-68 (1974) (affirming award of 33%); *Chavez*, 162 Cal. App. 4th at 50 (affirming award of 21.8 %).

B. Class Counsel Request 25% Of The Cash Settlement Fund Of $4 Million As Their Combined Fee And Expense Award

Class Counsel requests a combined fee and expense award of 25% of the cash Settlement Fund (or 13.3% of the minimum total settlement value) created by their efforts.

The cash amount of the Settlement Fund is $4 million, excluding the value of the injunctive relief. The requested fees and out-of-pocket expenses of $1 million amount to 25% of the Settlement Fund. The minimum value of the entire settlement is $7.5 million including the estimated value of the injunctive relief, and the requested fees and expenses of $1 million comprise 13.3% of that total value. Using either method of calculating the percentage, the requested fees and costs fall well within the range awarded in class action cases in California state and federal courts.

While 25% is the benchmark, district courts have granted and the Ninth Circuit has affirmed awards of attorneys' fees at or above a 30% fee. *See e.g., In re Mego Fin. Corp. Secs. Litig.*, 213 F.3d 454, 457, 463 (9th Cir. 2000) (affirming fee award of 33 1/3% of fund); *In re Pacific Enters. Sec. Litig.*, 47 F.3d 373, 379 (9th Cir. 1995) (award of 33% of settlement fund as fees affirmed); *McPhail v. First Command Fin. Planning, Inc.*, No. 05cv179-IEG-JMA, 2009 U.S. Dist LEXIS

26544, at *10 (S.D. Cal. Mar. 30, 2009) (awarding 30% for first $10 million and 25% for additional $2 million settlement). The percentage may be adjusted below or above the benchmark "to account for any unusual circumstances," but reasons for adjustment must be clear. *Paul, Johnson, Alston & Hunt v. Graulty*, 886 F.2d 268, 272 (9th Cir. 1989).

Class Counsel's request for fees is fair and reasonable in light of the fact that "special circumstances" support an upward departure from the 25% benchmark. *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d at 942 ("[C]ourts typically calculate 25% of the fund as the 'benchmark' for a reasonable fee award, providing adequate explanation in the record of any 'special circumstances' justifying a departure.") (citation omitted). Class Counsel obtained significant direct cash payments - not vouchers or coupons - for all Class Members who submit a claim. In addition, Class Counsel ensured, by negotiating a comprehensive notice program, and painstakingly monitoring the administration of the notice program, that all of the Settlement fund will be distributed to the class members, as opposed to the potential *cy pres* recipients. Moreover, Class Counsel were able to obtain Barbara's Bakery's agreement to eliminate the use of GMO ingredients in most of the Eligible Products and submit such Products to the rigorous auditing of the Non-GMO Project. This unique benefit is invaluable to the class members and not one that they could obtain through litigation. Additionally, Class Counsel were able to deliver the impressive monetary and non-monetary benefits of the Settlement to the class expeditiously, without burdening the class with unnecessary protracted litigation and related costs. Finally, Class Counsel are basing their percentage request solely on the Settlement Fund (the $4 million cash portion of the Settlement), exclusive of the value of the non-monetary benefits that the Settlement provides to the class, including label changes, the switch to non-GMO ingredient sourcing, and non-GMO auditing (valued at least at an additional $3.5 million).

Therefore, the Court should award Class Counsel's reasonable request for costs and fees at 25% of the cash fund.

C. The Lodestar / Multiplier Crosscheck

The attorneys' fees and costs sought by Class Counsel are also justified when applying the lodestar/multiplier crosscheck. Courts may, but do not have to, apply the lodestar method as a

crosscheck to assess the reasonableness of a percentage award. *Vizcaino*, 290 F.3d at 1050 n.5 ("The lodestar method is merely a cross-check on the reasonableness of a percentage figure.").

District courts within the Ninth Circuit have recognized that a lodestar crosscheck need not be performed where plaintiff's counsel achieves a significant result through an early settlement. *Rankin v. Am. Greetings, Inc.*, No. 2:10-CV-01831-GGH, 2011 U.S. Dist. LEXIS 72250, at *3-4 (E.D. Cal. July 6, 2011). One reason is the recognized shortcoming of the lodestar method, mainly its failure to reward early settlement, thereby encouraging costly litigation. *Vizcaino*, 290 F.3d at 1050 n.5 (the lodestar method "creates incentives for counsel to spend more hours than may be necessary on litigating a case so as to recover a reasonable fee, since the lodestar method does not reward early settlement."); *Lealao*, 82 Cal. App. 4th at 48 (percentage of benefit method is result-oriented as opposed to the process-oriented lodestar approach). Here, the Court need not conduct a lodestar crosscheck to determine the reasonableness of a 25% fee award.

Nevertheless, under the two-step lodestar/multiplier crosscheck, trial courts first calculate the lodestar, consisting of "all the hours reasonably spent, including those relating solely to the fee," times reasonable hourly rates. *Ketchum v. Moses*, 24 Cal. 4th 1122, 1133 (2001) (emphasis in original); *see also Hensley v. Eckhart*, 461 U.S. 424, 433 (1983); *In re Tobacco Cases I*, 216 Cal. App. 4th 570, 581-82 (2013). This "lodestar" can be adjusted upward or downward based on reasonable factors. *Ketchum*, 24 Cal. 4th at 1138 ("[T]he unadorned lodestar reflects the general local hourly rate for a *fee-bearing case*; it does *not* include any compensation for contingent risk, extraordinary skill, or any other factors a trial court may consider.") (emphasis in original); *see also Ctr. for Biological Diversity v. County of San Bernardino*, 195 Cal. App. 4th 866, 899 (2010).

The Court may adjust the lodestar figure "upward or downward" based on "a host of 'reasonableness' factors, 'including the quality of representation, the benefit obtained for the class, the complexity and novelty of the issues presented, and the risk of nonpayment.'" *In re Bluetooth*, 654 F.3d at 941-42 (quoting *Hanlon*, 150 F.3d at 1029); *see also Hartless*, 273 F.R.D. at 642; *Consumer Privacy Cases*, 175 Cal. App. 4th 545, 556-57 (2009). Other factors courts consider include the contingency risk involved in prosecuting the action and obtaining fees (*Graham v. Daimler Chrysler Corp.*, 34 Cal. 4th 553, 583 (2004)), the delay in receiving fees (*id.*), the

promptness of resolution (*Lealao*, 82 Cal. App. 4th at 52, *In re Vitamin Cases*, 110 Cal. App. 4th 1041, 1058-59 (2003)), and the "public service element, and motivation to represent consumers and enforce laws" (*State of California v. Meyer*, 174 Cal. App. 3d 1061, 1073 (1985)). When determining the multiplier, trial courts should consider all factors relevant to a given case. *Lealao*, 82 Cal. App. 4th at 40.

The purpose of using the lodestar/multiplier method is to mirror the legal marketplace: counsel will not handle cases on straight hourly fees that are payable only if they win, so an enhancement helps determine a fee that is commensurate with what attorneys could expect to be compensated for similar service in these circumstances. *San Bernardino Valley Audubon Soc'y v. San Bernardino*, 155 Cal. App. 3d 738, 755 (1984) (award must be large enough "to entice competent counsel to undertake difficult public interest cases"); *Lealao*, 82 Cal. App. 4th at 50 (adjusted lodestar should not be significantly different from the percentage fee freely negotiated in comparable litigation). "Multipliers can range from 2 to 4, or even higher." *Wershba*, 91 Cal. App. 4th at 255. The court in *Glendora Cmty. Redev. Agency v. Demeter*, 155 Cal. App. 3d 465, 479 (1984), approved a multiplier of 12. *See also Steiner v. Am. Broad. Co., Inc.*, 248 Fed. Appx. 780, 2007 U.S. App. LEXIS 21061, at *8 (9th Cir. Aug. 29, 2007) ("this multiplier [of 6.85] falls well within the range of multipliers that courts have allowed"); *SternwestCorp. v. Ash*, 183 Cal. App. 3d 74, 76 (1986) (case remanded with directions "to enhance the lodestar award by such factor (two, three, four or otherwise) that the court, in its discretion shall deem proper"); *Vizcaino*, 290 F.3d at 1051 (multiplier of 3.65); *Craft v. County of San Bernardino*, 624 F. Supp. 2d 1113, 1125 (C.D. Cal. 2008) (approving 25% fee award which equated to a 5.2 multiplier and collecting cases in support); *Buccellato v. AT&T Operations, Inc.*, No. 10-463, 2011 U.S. Dist. LEXIS 85699, at *5 (N.D. Cal. June 30, 2011) (collecting cases and approving multiplier of 4.3).

In this case, the lodestar of Class Counsel is $526,129.50 based on 887.4 hours of work as of September 27, 2013. Ahdoot Decl., ¶¶ 35-36. Plaintiff's expenses total to $13,281.43. *Id.* at ¶ 37.

Accordingly, the $1 million fee and expense award amounts to a 1.88 multiplier being applied.[12] Further, the award does not reflect the time and expenses that will necessarily be incurred to complete the final approval briefing (*i.e.* the filing of supplemental briefing due 7 days before the Fairness Hearing), prepare for and attend the final approval hearing, respond to any appeals, and continue overseeing the claim administration and payment process.

1. The Hourly Rates are Reasonable

Class Counsel is entitled to the hourly rates charged by attorneys of comparable experience, reputation and ability for similar litigation. *Ketchum*, 24 Cal. 4th at 1133. Typically, the court looks to prevailing market rates in the community in which the court sits. *Schwartz v. Sec'y of Health & Human Servs.*, 73 F.3d 895, 906 (9th Cir. 1995). Payment at full market rates is essential to fulfill the goal of enticing well-qualified counsel to undertake difficult consumer interest litigation, such as this. *San Bernardino*, 155 Cal. App. 3d at 755. The background and experience of Class Counsel are set forth in the concurrently filed declaration of Robert Ahdoot. Ahdoot Decl., ¶¶ 40-54. Class Counsel each have excellent reputations as class action litigators, with specialized experience in false advertising and consumer class action law. Their hourly rates are well within or below the range of rates billed by comparable attorneys in this market and are the standard rates they charge to all of their clients. Ahdoot Decl., ¶¶ 35-36, and Exh. 3 (2012 National Law Journal Billing Survey); *see also* Adjusted Laffey Matrix (www.laffeymatrix.com/see.html) (last visited Sept. 30, 2013).[13]

Class Counsel's rates also compare very favorably with rates approved by other trial courts

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[12] The 1.88 multiplier is calculated as follows: $1,000,000 (total fees and costs requested) less $13,281.43 (the costs) = $986,718.57 (total fees requested). Then, $986,718.57 (total fees requested) divided by $526,129.50 (total lodestar) = 1.875429091 (1.88).

[13] The Laffey Matrix is a schedule of standardized hourly rates originally applicable for attorneys in the Washington, D.C. area. *See* http://www.laffeymatrix.com/see.html (last visited Sept. 30, 2013); *see also*, *Laffey v. Northwest Airlines, Inc*., 572 F. Supp. 354, 371 (D.D.C. 1983). It has been increasingly used by Courts as reference in its adjusted form. *See, e.g.*, *Kempf v. Barrett Bus. Servs*., No. C-06-3161 SC, 2007 U.S. Dist. LEXIS 89447 (N.D. Cal. Nov. 20, 2007) (finding attorneys' requested fees reasonable when compared to rates in the Updated Matrix).

in class action litigation. *See Wren vs. RGIS Inventory Specialists,* 2011 U.S. Dist. LEXIS 38667 N.D. Cal. Apr. 1, 2011) (finding as reasonable $650 per hour for a 1993 graduate); *Californians for Disability Rights v. Cal. DOT*, 2010 U.D. Dist. LEXIS 141030 (N.D. Cal. Dec. 13, 2010) (finding as reasonable $570 per hour for a 2000 graduate, $350 per hour for a 2007 graduate, and $475 per hour for a 2005 graduate); *Suzuki v. Hitachi*, 2010 U.S. Dist. LEXIS 22908, 2010 WL 956896 *3 (N.D. Cal March 12, 2010) (finding as reasonable attorneys fees rate of $650 for partner services, $500 for associate service and $150 for paralegal services); *Shames v. Hertz Corp.,* No. 07-CV-2174-MMA(WMC), 2012 U.S. Dist. LEXIS 158577, at *59-60 (S.D. Cal. Nov. 5, 2012) (finding hourly rates ranging from $675 per hour for partners to $150 for paralegals to be reasonable for the San Diego legal market); *Iorio v. Allianz Life Ins. Co. of N. America*, No. 05-CV-0633-JLS (CAB), 2011 U.S. Dist. LEXIS 21824, at *31-32 (S.D. Cal. March 3, 2011) (partner rates of $750 per hour; associate rates of $595 per hour; paralegal rates of $195 per hour were reasonable); *Negrete v. Fid. and Guar. Life Ins. Co*., No. CV-05-6837- CAS-MANx (C.D. Cal. April 19, 2010) (final order and judgment); *POM Wonderful, LLC v. Purely Juice, Inc.*, No. 07-2633, 2008 U.S. Dist. LEXIS 110460, at *11-13 (C.D. Cal. Sept. 22, 2008) (partner rates of $750 to $450 and associate rates of $425 to $275 were reasonable). *Lingenfelter v. Astrue*, No. SA CV-03-00264-VBK, 2009 U.S. Dist. LEXIS 87685, at *11 (C.D. Cal. Sep. 3, 2009) ($600 is "reasonable"); *Love v. Mail on Sunday*, No. CV-05-7798-ABC (PJWX), 2007 U.S. Dist. LEXIS 97061, at *25 (C.D. Cal. Sept. 7, 2007) (approving partner rates of $540-$690 and associate rates of $305-$485); *Housing Rights Ctr. v. Sterling*, No. CV 03-859 DSF (Ex), 2005 U.S. Dist. LEXIS 31872, at *10 (Nov. 2, 2005) (noting hourly rates may run up to $1,000 per hour in Los Angeles, with $125 to $650 routine in California). Finally, Class Counsel has submitted a sworn declaration attesting to the 2012 hourly rates and total hours, experience, and detailed efforts of the attorneys who prosecuted this case. Ahdoot Decl. ¶¶ 35-54.

2. The Hours Expended Are Reasonable

The number of hours spent by Class Counsel is reasonable.[14] The 887.4 hours expended by Class Counsel represent efforts incurred in the litigation as detailed above and in the Declaration of Robert Ahdoot, filed concurrently herewith. When all of the efforts detailed in Section II of this Motion (above) are considered, a total 887.4 expended hours is reasonable. *Hartless*, 273 F.R.D. at 644 (holding 5000 hours spent on a case that settled prior to class certification with no appeals was reasonable).

D. Plaintiff's Expenses Are Reasonable and Compensable

The reasonableness of the requested fee award is reinforced by the fact that it includes all out-of-pocket expenses incurred by Class Counsel to prosecute the Class claims. Both the Ninth Circuit and California state courts allow recovery of pre-settlement litigation costs in the context of class action settlements. *See Staton*, 327 F.3d at 974; *Serrano III*, 20 Cal. 3d at 35; *Rider v. San Diego*, 11 Cal. App. 4th 1410, 1424 n.6 (1992); *see also* H. Newberg & A. Conte, *Newberg on Class Actions*, §12.08, at 50-51 (2d ed. 1993). "Attorneys may recover their reasonable expenses that would typically be billed to paying clients in non-contingency matters." *In re Omnivision Techs.*, 559 F. Supp. 2d 1036, 1048 (N.D. Cal. 2007); *see also Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994).

Class Counsel's declaration attests to the expenses incurred in this litigation — in the aggregate, a moderate $13,281.43 was invested. Ahdoot Decl., ¶ 37. As detailed in the Declaration of Robert Ahdoot, filed concurrently herewith, Class Counsel incurred these costs for mediation

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[14] Though Class Counsel's hours are based on contemporaneous time records, Counsel need only submit summaries of their hours incurred; submission of billing records are not required. *Wershba*, 91 Cal. App. 4th at 254-55; *Chavez*, 162 Cal. App. 4th at 64 ("timesheets are not required of class counsel to support fee awards in class action cases."); *Lobatz v. U.S. W. Cellular of Cal., Inc*., 222 F.3d 1142, 1148-49 (9th Cir. 2000) (the court may rely on summaries of the total number of hours spent by counsel); *POM Wonderful, LLC*, 2008 U.S. Dist. LEXIS 110460, at *11-13; *Hemphill v. S.D. Ass'n of Realtors, Inc.*, 225 F.R.D. 616, 623-24 (S.D. Cal. 2004) (declining review of detailed time records where no evidence of collusion); *see also In re Ins. Brokerage Antitrust Litig.,* 579 F.3d 241, 284 (3d Cir. 2009) (finding district court's reliance on time summaries of counsel proper). Nonetheless, Class Counsel time records are available to the Court for *In Camera* review.

fees, expert fees, filing fees, attorney service fees, overnight postage, travel and discovery (document management). These expenses do not include costs resulting from in-house computer research, photocopies, postage, or telephone charges. All of these expenses were reasonably and necessarily incurred, and are of the sort that would typically be billed to paying clients in the marketplace.

E. The Requested Incentive Award Is Reasonable

"Incentive awards are fairly typical in class action cases." *Rodriguez*, 563 F.3d at 958; Theodore Eisenberg & Geoffrey P. Miller, *Incentive Awards to Class Action Plaintiffs: An Empirical Study*, 53 U.C.L.A. L. Rev. 1303, 1303 (2006) (28% of class actions include incentive awards to class representatives). Such awards "serve an important function in promoting class action settlements." *Sheppard v. Cons. Edison Co. of N.Y., Inc.,* No. 94-CV-0403(JG), 2002 U.S. Dist. LEXIS 16314, at *16 (E.D.N.Y. Aug. 1, 2002). The Ninth Circuit has recognized that incentive awards "are intended to compensate class representatives for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the action, and, sometimes, to recognize their willingness to act as a private attorney general." *Rodriguez*, 563 F.3d at 958-59. Incentive awards are committed to the sound discretion of the trial court and should be awarded based upon the court's consideration of, inter alia, the amount of time and effort spent on the litigation, the duration of the litigation and the degree of personal gain obtained as a result of the litigation. *See Van Vranken v. Atlantic Richfield Co.*, 901 F. Supp. 294, 299 (N.D. Cal. 1995).

Here, Plaintiff respectfully requests that the Court approve a modest service award of $2,500 for Plaintiff, Richard Trammell, in recognition of his contribution toward the successful prosecution of this case. Mr. Trammell assisted with the pre-filing investigation of this matter. Further, he reviewed relevant pleadings and kept in constant communication with counsel throughout the litigation. He was also willing to provide both deposition and trial testimony as needed. Mr. Trammell was always ready, willing and able to assist with the case in any way necessary and appropriate. Declaration of Richard Trammell In Support of Final Approval of Class Action Settlement and Incentive Award, ¶¶ 2-4, filed concurrently herewith. Barbara's Bakery does not oppose the payment of these service awards. Settlement Agmt., §IX.F (Dkt. 37). The requested

service award falls squarely in line with amounts awarded in comparable cases. *See, e.g. In re Mego Fin.*, 213 F.3d at 463 (approving $5,000 incentive awards); *Garner v. State Farm Mut. Auto. Ins. Co.*, No. CV 08 1365 CW (EMC), 2010 U.S. Dist. LEXIS 49477, at *47 (N.D. Cal. Apr. 22, 2010) (service award of $20,000 was "well justified" given plaintiffs' efforts on behalf of the class) (compiling cases); *Pelletz v. Weyerhaeuser Co.*, 592 F. Supp. 2d 1322, 1330 (W.D. Wash. 2009) ("When compared to service awards in other cases, the $7,500 payments requested here are justified."); *Cicero v. DirecTV, Inc.*, No. EDCV 07-1182, 2010 U.S. Dist. LEXIS, at *19 (C.D. Cal. July 27, 2010) (approving incentive awards of $5000); *Williams v. Costco Wholesale Corp.*, No. 02 CV 2003 IEG (AJB), 2010 U.S. Dist. LEXIS, at *19-20 (S.D. Cal. July 7, 2010) (approving a $5000 incentive award); *Van Vranken*, 901 F. Supp. at 300 (approving service award of $50,000).

IX. CONCLUSION

For the reasons set forth above, Plaintiff respectfully requests the Court confirm certification of the Settlement Class, grant final approval of the Settlement and approve the requested award of attorneys' fees and expenses and Plaintiff's service awards, and enter a Final Order Approving Class Action Settlement and a Final Judgment in substantially the same form as those previously filed as Exhibits 3 and 4, respectively, of the Settlement Agreement (Dkt. 37-3 and 37-4).

Respectfully Submitted,

AHDOOT & WOLFSON, PC

Dated: September 30, 2013

/s/ Robert Ahdoot

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Attorneys for Plaintiff, Richard Trammell

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

RICHARD W. TRAMMELL, individually and on behalf of all others similarly situated,

Plaintiffs,

v.

BARBARA'S BAKERY, INC. a California corporation; and DOES 1-50,

Defendants

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

DECLARATION OF SHANNON R. WHEATMAN, PH.D. ON IMPLEMENTATION AND ADEQUACY OF NOTICE PLAN IN SUPPORT OF PLAINTIFF'S MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT

Hearing Date: November 8, 2013
Time: 10:00 A.M.
Place: Courtroom 6 (17th Floor)

The Honorable Charles R. Breyer, Presiding

Filed concurrently with Plaintiff's Notice of Motion and Motion for Final Approval of Class Action Settlement

DECLARATION OF SHANNON R. WHEATMAN, PH.D.

I, Shannon R. Wheatman, being duly sworn, hereby declare as follows:

1. I am a Senior Vice President of Kinsella Media, LLC ("KM"), an advertising and notification firm in Washington, D.C. specializing in the design and implementation of class action and bankruptcy notification programs. My business address is 2120 L Street, NW, Suite 860, Washington, D.C. 20037. My telephone number is (202) 686-4111.

2. I have served as a qualified class action notice expert in many major class actions.

3. My relevant experience is detailed in the Declaration of Shannon R. Wheatman, Ph.D. On Adequacy of Notice Plan In Support of Plaintiff's Motion for Preliminary Approval of Class Action Settlement, filed on April 25, 2013 ("Wheatman Decl. ISO Prelim App."), ¶¶3-8 (ECF Dkt. No. ("Dkt.") 36-2). *See also Id.* at Exhibit 2, Curriculum Vitae of Shannon R. Wheatman.

4. All capitalized words or terms used herein shall have the same meaning, force and effect as defined in the Settlement Agreement filed on April 25, 2013 (Dkt. 37), unless otherwise specifically defined herein.

5. Along with the professionals at Rust Consulting, Inc. ("Rust"), I am one of the individuals responsible for the notice and administration of the settlement in this action ("Settlement"). Rust Consulting is a well-known class administration company with decades of experience handling some of the largest and most complex class action settlements.

6. I have personal knowledge of the matters set forth in this declaration, and, if called to testify to them, would be competent to do so.

7. This declaration details all of the notice activities that were undertaken, provide "proofs of performance," and explains how and why the notice program was adequate to satisfy due process requirements of notice to the Class Members.

8. It will also provide details regarding the total costs of the notice and administration of the settlement and the number of claims, exclusion requests, and objections submitted by the Class Members as of September 27, 2013.

SUMMARY OF CONCLUSIONS

9. The notice program ("Notice Program") is described in the Wheatman Decl. ISO Prelim. App., ¶¶14-28 and Exhibit 1 attached thereto (Dkt. 36-2).

10. The Court approved the Notice Program on June 26, 2013. *See* Order Preliminarily Certifying 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 (Dkt. 58).

11. The Notice Program was implemented according to its terms and the terms and conditions of the Settlement Agreement.

12. The Notice Program was designed to reach the greatest practicable number of Class Members ensuring that they will be exposed to the Notice, to see, review, and understand it.

13. The Court-approved Notice Program, designed and implemented for this case, achieved each of the planned objectives:

a. Each element of the Notice Program approved by the Court has been implemented.

b. The Notice Program, as implemented, reached over 80% of potential Class Members through paid media.

c. The Court-approved Notices were noticeable, clear, simple, substantive, and informative. No significant or required information was missing.

14. In my view, the Notice Program implemented in this action provided the best notice practicable under the circumstances of this case, and satisfied due process.

15. The details of the notice plan and the basis for my opinion of its adequacy, as well as on the adequacy of the Notice Program as implemented, are outlined below.

DIRECT NOTICE

16. On July 5, 2013, following the establishment of the Settlement website (www.BarbarasBakerySettlement.com), the Summary Notice in the form of an Email Notice was sent to 6,670 known Class Members who purchased Barbara's Bakery products online.

17. Out of these 6,670 emails, 704 were undeliverable. Summary Notices were mailed, via United States Mail, to physical addresses associated with all undeliverable email records.

18. In addition, the Summary Notice was mailed, via United States Mail, to 245 individuals for whom a physical address was provided without an email address.

19. Four (4) Summary Notices sent via United States mail were undeliverable because of invalid addresses that could not be updated.

PUBLICATION NOTICE

20. To effectively reach Class Members, KM implemented a paid media program.

21. KM chose adults 18 years of age or older that bought food labeled as natural or organic ("Healthy Food Purchasers") as the primary target audience. As described in the Wheatman Decl. ISO Prelim. App. ¶¶19-20 (Dkt. 36-2), GfK MediaMark Research, Inc. ("GfK MRI") provided specific data on this target audience.

22. To effectively reach this Class, KM recommended a broad-based notice program that utilizes national consumer magazines, a newspaper supplement, and Internet ad networks in order to meet due process standards and provide the best notice practicable under the circumstances.

23. The Publication Notice was designed to provide Class Members with plain language information regarding the Settlement and informs them about their rights. The Publication Notice appeared in consumer magazines as follows: one time in *Parents*, *People*, and *Southern Living*. The Publication Notice appeared in the national newspaper supplement, *Relish*. The Publication Notice appeared once a week for four successive weeks in *USA Today*. These periodicals have a combined circulation of approximately 23,475,000.

24. Internet banner advertising appeared from August 1, 2013 to August 31, 2013 across the following online networks and websites: 24/7 Real Media Network, Facebook.com, Microsoft Media Network, Specific Media, and Yahoo! Network.

25. These networks are national media networks that allow banner advertisement impressions to be seen on hundreds of websites like Goodhousekeeping.com, FoxSports.com, BleacherReport.com, Imdb.com, sports.yahoo.com, among many others.

26. Banner ads are short, Internet-based advertisements designed to attract attention. When presented with such an ad, an interested Internet user need only click on the banner ad to be taken directly to the Settlement website.

27. The banner advertisement campaign is complete and delivered 183,350,222 million impressions or opportunities for potential Settlement Class Members to click on the banner advertisement and view the Settlement website.

28. A true and correct Implementation Report for the Notice Program is attached hereto as **Exhibit 1** and confirms that the Court-approved Notice Program was implemented.

29. The Implementation Report details each print publication and the date and page number upon which the Publication Notice appeared.

30. A true and correct copy of the Publication Notice, or "tearsheet," as it appeared in print is attached as **Exhibit 2**.

31. Attached hereto as **Exhibit 3** is a true and correct copy of the banner ad and examples of how it appeared on several websites.

32. For the purpose of evaluating the strength and efficiency of the media, the national consumer magazines, newspaper supplement, and Internet were measured against the target audience to establish the estimated reach of the media program and the estimated frequency of exposure to the media vehicles.

a. An estimated 80.1% of Healthy Food Purchasers were reached with an average frequency of 2.3 times.

EARNED MEDIA

33. An earned media program was implemented in order to amplify the paid media program and provide additional notice to Class Members. The press release provided information about the Settlement and highlighted the toll-free telephone number and website address so that Settlement Class Members could obtain complete information.

34. On August 6, 2013, a press release was distributed on PR Newswire's Full National Circuit, reaching approximately 5,000 media outlets and 5,400 websites.

ONLINE MEDIA

35. On July 5, 2013, the neutral website www.BarbarasBakerySettlement.com went live. By accessing the website, Class Members could obtain additional information and documents about the Settlement including the Long Form Notice, Court documents, Frequently Asked Questions, and other information.

36. The website address was prominently included in all Notice materials.

37. The address of the website dedicated to the Settlement appeared on all of the notice pieces, and is hyper-linked where a notice piece appears on the Internet.

38. The Settlement website provides detailed information about the Settlement, as well as a copy of the Publication Notice, Long-form Class Notice, summary of important dates, a copy of the Stipulation of Settlement with Exhibits, the Complaint, and the Preliminary Approval Order.

39. True and correct copies of the Summary Notice and Class Notice available on the website are attached hereto as **Exhibit 4** and **Exhibit 5**, respectively.

40. The Class Notice is also available by request to Rust, the Class Action Settlement Administrator.

41. The website allows Class Members to complete and submit a Claim Form online or to download a copy of the Claim Form for mailing to the Settlement Administrator. A true and correct copy of the Claim Form available on the website is attached hereto as **Exhibit 6**.

42. In addition, the website advises Class Members of their legal rights, including, for example, how to opt-out or object to the Settlement.

43. The website, including the online Claim Form, was operational as of July 5, 2013. From its inception to September 27, 2013, there have been 109,606 unique visits to the website.

OTHER

44. On July 5, 2013, a toll-free phone number (866-590-8528) was established to allow Class Members to call and request that the Class Notice or Claim Form be mailed to them or listen to frequently asked questions. As of September 27, 2013, there have been 799 calls to the toll free number.

45. A post office box was established allowing Class Members to contact Class Counsel by mail with any specific requests or questions.

PERFORMANCE AND DESIGN OF NOTICE PROGRAM

46. **The Objectives Were Met**. The primary objective of the Settlement Notice effort in this case was to effectively reach the greatest practicable number of Class Members with a "noticeable" Notice of the Settlement, and provide Class Members with every reasonable opportunity to understand that their legal rights are affected, and that they have a right to be heard and to object to and request exclusion from the settlement. This objective was met.

47. **Notice Reached Class Members Effectively.** Our calculations indicate that individual notice in combination with the supplemental media program reached over 80% of potential Class Members. In addition, although not included in the reach percentage above, the Settlement website further enhanced coverage among the Class. In my experience, this reach meets that achieved in many other court-approved notice programs. Based on our calculations, I can confidently state that the Class was adequately reached with notice of the Settlement.

48. **Plenty of time and opportunity to react to the Notice.** The final appearance of the Publication Notice was on August 26, 2013, which allowed plenty of time for Class Members to see the Notice and respond accordingly before the October 14, 2013 exclusion and objection deadlines. With 49 days from the last Notice appearance until the exclusion and objection deadlines, 74 days until the fairness hearing, and 128 days until the claims deadline, Class Members were allotted more than adequate time to act on their rights.

49. **Notices Were Designed To Increase Noticeability And Comprehension.** The Court-approved Notices were designed to bring the Notices to the attention of Class Members. The Summary Notices (disseminated via Email, U.S Mail and Publication as described above) were designed to capture the Class Member's attention with clear, concise, plain language. They directed readers to the case website for more information. The plain language text provided important information regarding the subject of the litigation, the Class definition, and the legal rights available to Class Members. No important or required information was missing or omitted. In fact, these notices stated all required information, without omitting significant facts that Class Members need to

understand their rights. The Summary Notices referred readers to the Long Form Notice which was available to those who call or visit the website.

50. **The Long Form Notice Was Available At The Website Or By Calling The Toll-Free Number.** The Long Form Notice provided substantial information, including all specific instructions Class Members need to follow to properly exercise their rights, and background on the issues in the case. It was designed to encourage readership and understanding, in a well-organized and reader-friendly format.

51. **Standard.** In preparing the Notices in this Settlement, I employed communications methods that are well-established in my field. In addition, I embraced the high standards embodied in the Advisory Committee's notes accompanying the 2003 changes to Rule 23(c)(2): the direction that the class-certification notice be couched in plain easily understood language is added as a reminder of the need to work unremittingly at the difficult task of communicating with Class Members.

CURRENT DATA

52. As of September 27, 2013:

a. No objections to the Settlement have been received by Rust or KM;

b. One Class Member has opted-out of the Settlement;

c. A total of 33,199 Class Members have submitted a Claim Form to the Settlement Administrator, as follows:

Number Of Class Member Claims	Claimed Amount
20,262	More than $100
8,841	Between $75.01 and $100
2,302	Between $50.01 and $75
1,160	Between $25.01 and $50
476	Between $10.01 and $25
153	Less Than $10
5	No Amount Claimed

53. As of September 27, 2013, the total costs associated with the notice administration of the Settlement charged by the Settlement Administrator and Notice Administrator, combined, is $732,792.01. Rust Consulting and Kinsella Media estimate that the total cost of the notice and

administration of the Settlement will be $786,350. Pursuant to the contract negotiated by Class Counsel, the total costs of notice and administration cannot exceed $875,000.

CONCLUSION

54. It is my opinion that the reach of the target audience and the number of exposure opportunities to the notice information was adequate and reasonable under the circumstances, and it is consistent with the standards employed by KM in notification programs designed to reach members of settlement groups or classes.

55. The Notice Program as designed is fully compliant with Rule 23 of the Federal Rules of Civil Procedure, and in my opinion, it is the best notice practicable.

I declare under penalty of perjury that the foregoing is true and correct. Executed in Washington, D.C. this 30th day of September 2013.

Shannon R. Wheatman, Ph.D.

EXHIBIT LIST

1. Notice Program Implementation Report
2. Publication Tear Sheet (Summary Notice)
3. Banner Ad Exemplars
4. Summary Notice
5. Class Notice (Long Form Notice)
6. Claim Form

EXHIBIT 1

Notice Program Implementation Report

Trammell v. Barbara's Bakery, Inc.

KINSELLA MEDIA

Paid Media Components

Print Media	Unit Type/Size	Date Ad(s) Ran	Page # of Ad	Tearsheet Received?
Magazine(s)				
Parents	Half Page (3.5" x 10")	8/6/2013	250	Yes
People	Half Page (3.375" x 10")	8/9/2013	58	Yes
Southern Living	Half Page (3.5" x 10")	8/23/2013	132	Yes
Newspaper(s)				
USA Today (LA/San Francisco editions)	1/4 Page (5.43" x 10.28")	8/5/2013	5B	Yes
USA Today (LA/San Francisco editions)	1/4 Page (5.43" x 10.28")	8/12/2013	5B	Yes
USA Today (LA/San Francisco editions)	1/4 Page (5.43" x 10.28")	8/19/2013	2B	Yes
USA Today (LA/San Francisco editions)	1/4 Page (5.43" x 10.28")	8/26/2013	7B	Yes
Newspaper Supplement(s)				
Relish	2/5 Page (4.75" x 6.625")	8/7/2013	14	Yes

Online Media	Ad Type/Size	Estimated Impressions	Ads Ran?
Web			
24/7 Network	728x90, 300x250, 160x600	7,092,222	Confirmed
24/7 Network	728x90, 300x250, 160x600	118,750,000	Confirmed
Facebook.com	110x80	1	Confirmed
Microsoft Media Network	728x90	4,000,000	Confirmed
Microsoft Media Network	300x250	1,462,000	Confirmed
Microsoft Media Network	160x600	23,000,000	Confirmed
PointRoll - Ad server	Serving & Reporting: Static/Flash/Rich Media Ads	1	Confirmed
Specific Media	300x250; 728x90; 160x600	14,447,000	Confirmed
Yahoo! Network	728x90	12,500,000	Confirmed
Yahoo! Network	300x250	599,000	Confirmed
Yahoo! Network	160x600	1,500,000	Confirmed

Other Program Components

Website Services: Site Production	Completed

EXHIBIT 2

Legal Notice

If You Bought a Barbara's Bakery Product

You Could Get Up to $100 From a Settlement

Includes: Barbara's Bakery Cereals, Cereal Bars, Cheese Puffs, Crackers, Fig Bars, Granola Bars, Organic Mini Cookies, Snack Mixes, and Snackimals Animal Cookies

There is a class action Settlement involving Barbara's Bakery Products. The lawsuit claims that Barbara's Bakery violated state laws regarding the marketing and sale of certain products. Barbara's Bakery denies it did anything wrong.

Who is included in the Settlement?

Anyone who bought an eligible Barbara's Bakery product from May 23, 2008 to July 5, 2013 is included in the Settlement. A full list of products is available at the website located at www.BarbarasBakerySettlement.com or by calling 1-866-590-8528.

What does the Settlement provide?

A Settlement Fund of $4 million will pay (1) money to eligible Class Members, (2) the costs of notice and administration, (3) attorneys' fees and costs, and (4) a special service payment to the Class Representative. Barbara's Bakery has also agreed to change some of its business practices, including modifying its product labels and advertising. Any money remaining in the Settlement Fund after all claims are paid will be donated to charities and non-profit organizations. Additional details are in the Settlement Agreement available on the website. .

How can I get a payment?

Submit a Claim Form online or by mail by **January 1, 2014**. The payment amount you receive will be based in part on the amount of products you purchased and the total number of claims made.

What are my rights?

Even if you do nothing you will be bound by the Court's decisions. If you want to keep your right to sue Barbara's Bakery yourself, you must exclude yourself from the Settlement by **October 14, 2013**. If you stay in the Settlement, you may object to it by **October 14, 2013**.

The Court will hold a hearing on **November 8, 2013** to consider whether to approve the Settlement, a request for attorneys' fees up to $1 million, and a special service payment of $2,500 from the Settlement Fund. You or your own lawyer may appear and speak at the hearing at your own expense.

For More Information: 1-866-590-8528
www.BarbarasBakerySettlement.com

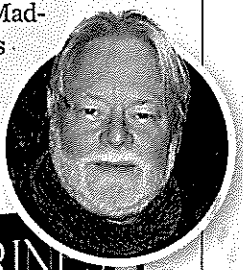
Sandrine's Case

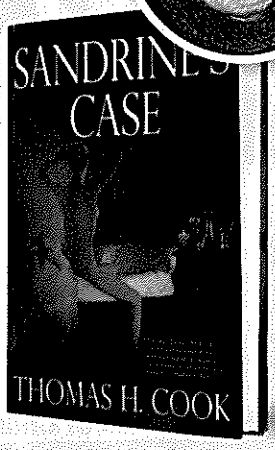
by Thomas H. Cook | ★★★★

REVIEWED BY ERIC LIEBETRAU

NOVEL

Scores of literary allusions collide in this consistently engaging court procedural. As English professor Samuel Madison stands trial for the murder of his wife, Sandrine—whose death was initially ruled a suicide—he reminisces about their lives and tries to piece together how their marriage fractured. The courtroom proceedings thrillingly advance the narrative to its surprising conclusion, but the real treat is Cook's tender, gradual exploration of the push and pull between Samuel and Sandrine, an unlikely pair whose fraught dynamics play out over the course of the trial and ultimately contribute to the verdict.





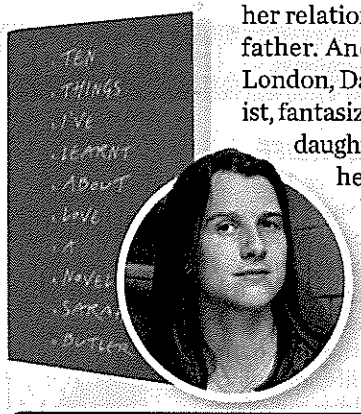
Ten Things I've Learnt About Love

by Sarah Butler | ★★★★

REVIEWED BY CAROL MEMMOTT

NOVEL

Two tenderly told tales run through this touching debut novel about familial love and loss. In one, Alice, the youngest of three daughters, always felt there was something missing in her relationship with her dying father. And in another part of London, Daniel, a homeless artist, fantasizes about meeting the daughter who doesn't know he exists. Readers will be charmed by their stories, intermingled with hopes and regrets. Their lives run parallel until they subtly intertwine.



COMMENTS? WRITE TO KIM HUBBARD:
bookseditor@peoplemag.com

FROM TOP: COURTESY THOMAS COOK; EVA SAJONIC

EXHIBIT 3

Kinsella Media
STANDARD BANNERS 300x250

FRAME 1
opens with variety of barbaras products on screen

FRAME 2
Header text fades in from small quickly

FRAME 3
After pausing 1.5 second on header text, the "settlement" text comes in and the prompt comes in from the side. Product list and product image cycle begins.

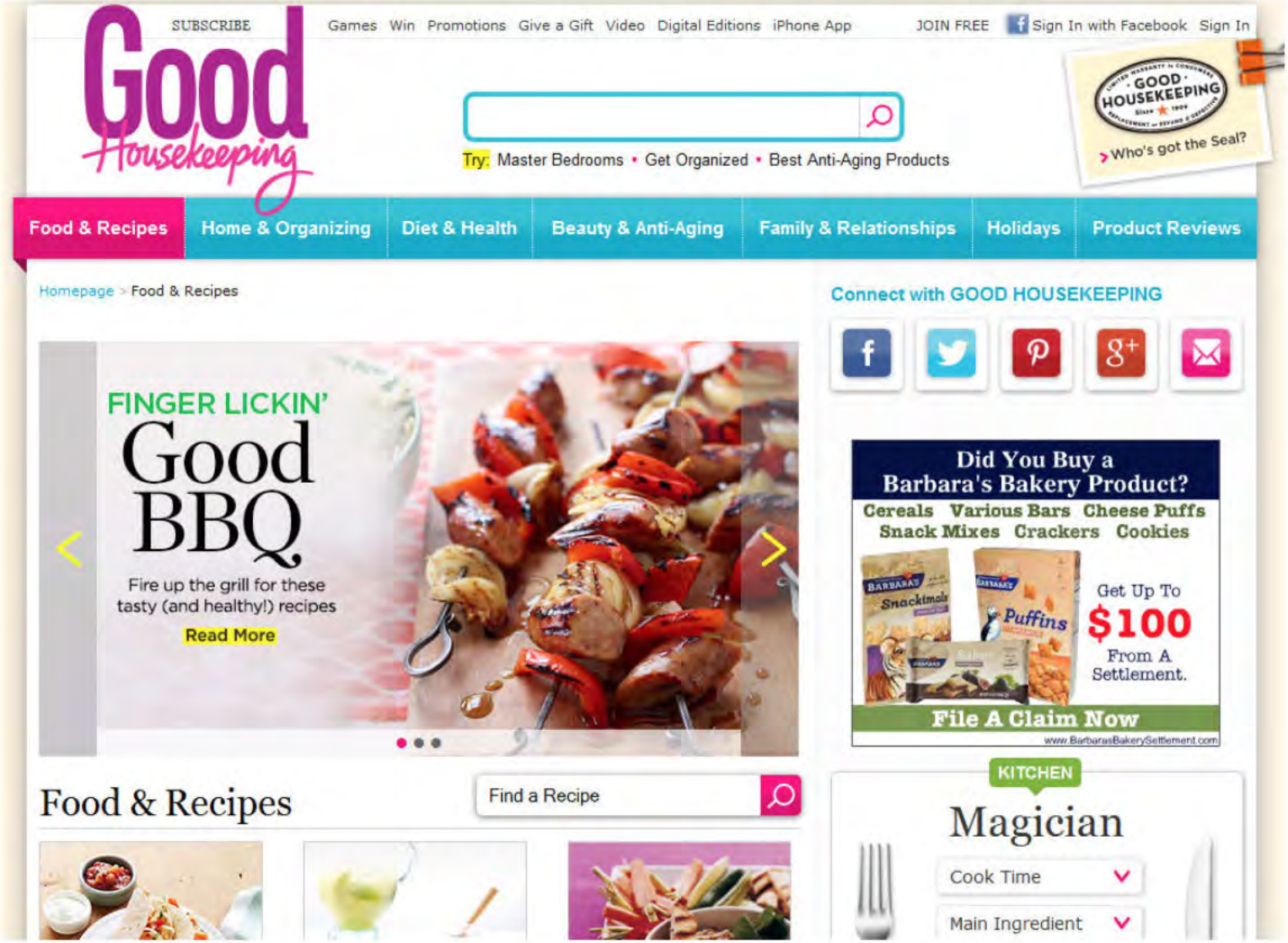
FRAME 4
Product list and product image cycle continues.

FRAME 5
Product list and product image cycle continues.

FRAME 6
All produts re-appear for final positioning. Settlement text slides down to final position. All listed products appear at top. 'File a Claim' text flashes to attract user's eye.

Goodhousekeeping.com

24/7 MEDIA



Did You Buy a Barbara's Bakery Product?
Cereals

Get Up To $100 From A Settlement.
File A Claim Now
www.BarbarasBakerySettlement.com

MLB TEAMS

MLB BASEBALL TEAMS

AMERICAN LEAGUE

AL East

Baltimore Orioles
Team Front | Stats | Roster | Schedule | Lineup | Tickets

Boston Red Sox
Team Front | Stats | Roster | Schedule | Lineup | Tickets

New York Yankees
Team Front | Stats | Roster | Schedule | Lineup | Tickets

Tampa Bay Rays
Team Front | Stats | Roster | Schedule | Lineup | Tickets

Toronto Blue Jays
Team Front | Stats | Roster | Schedule | Lineup | Tickets

AL Central

Chicago White Sox
Team Front | Stats | Roster | Schedule | Lineup | Tickets

NATIONAL LEAGUE

NL East

Atlanta Braves
Team Front | Stats | Roster | Schedule | Lineup | Tickets

Miami Marlins
Team Front | Stats | Roster | Schedule | Lineup | Tickets

New York Mets
Team Front | Stats | Roster | Schedule | Lineup | Tickets

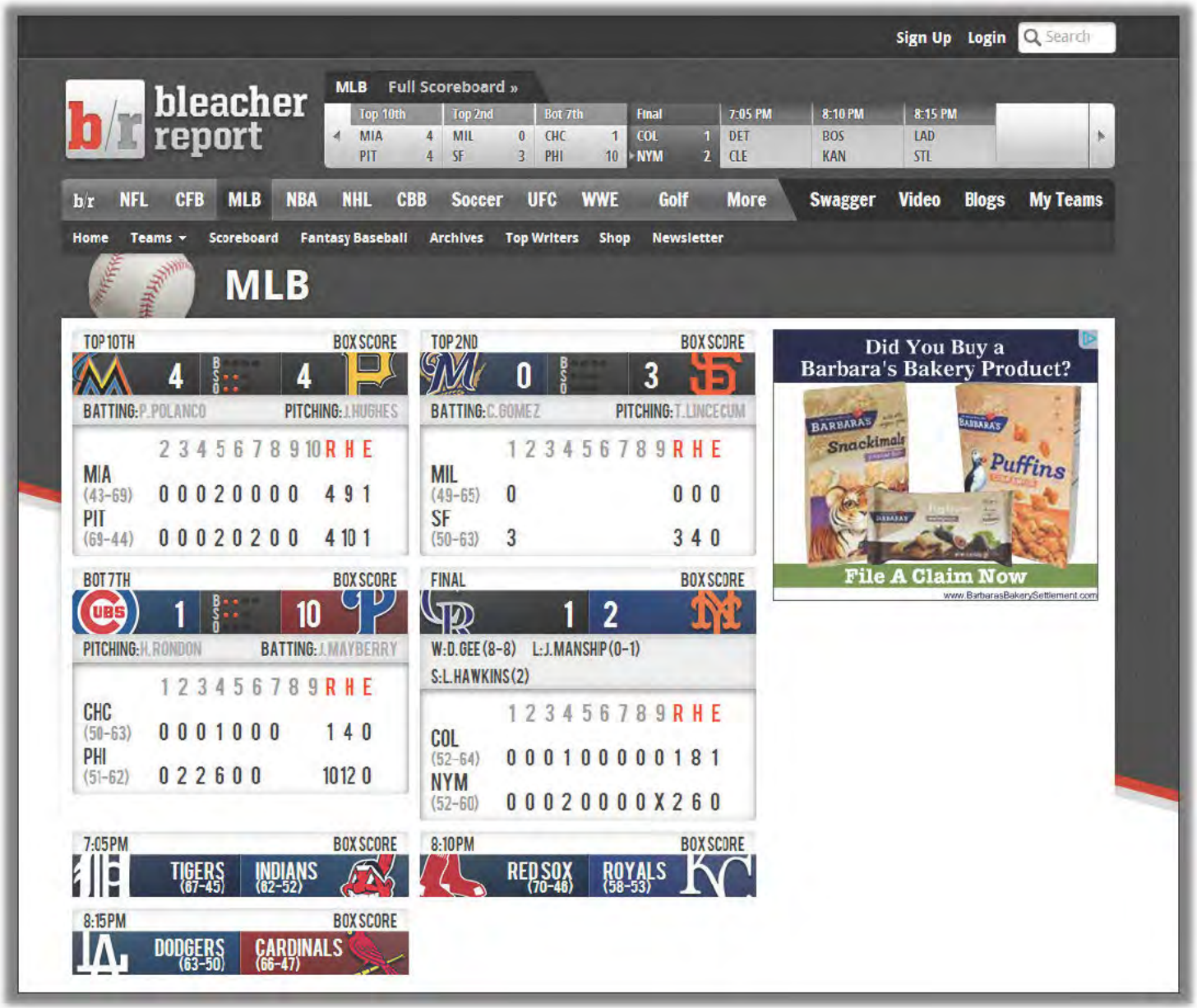
Philadelphia Phillies
Team Front | Stats | Roster | Schedule | Lineup | Tickets

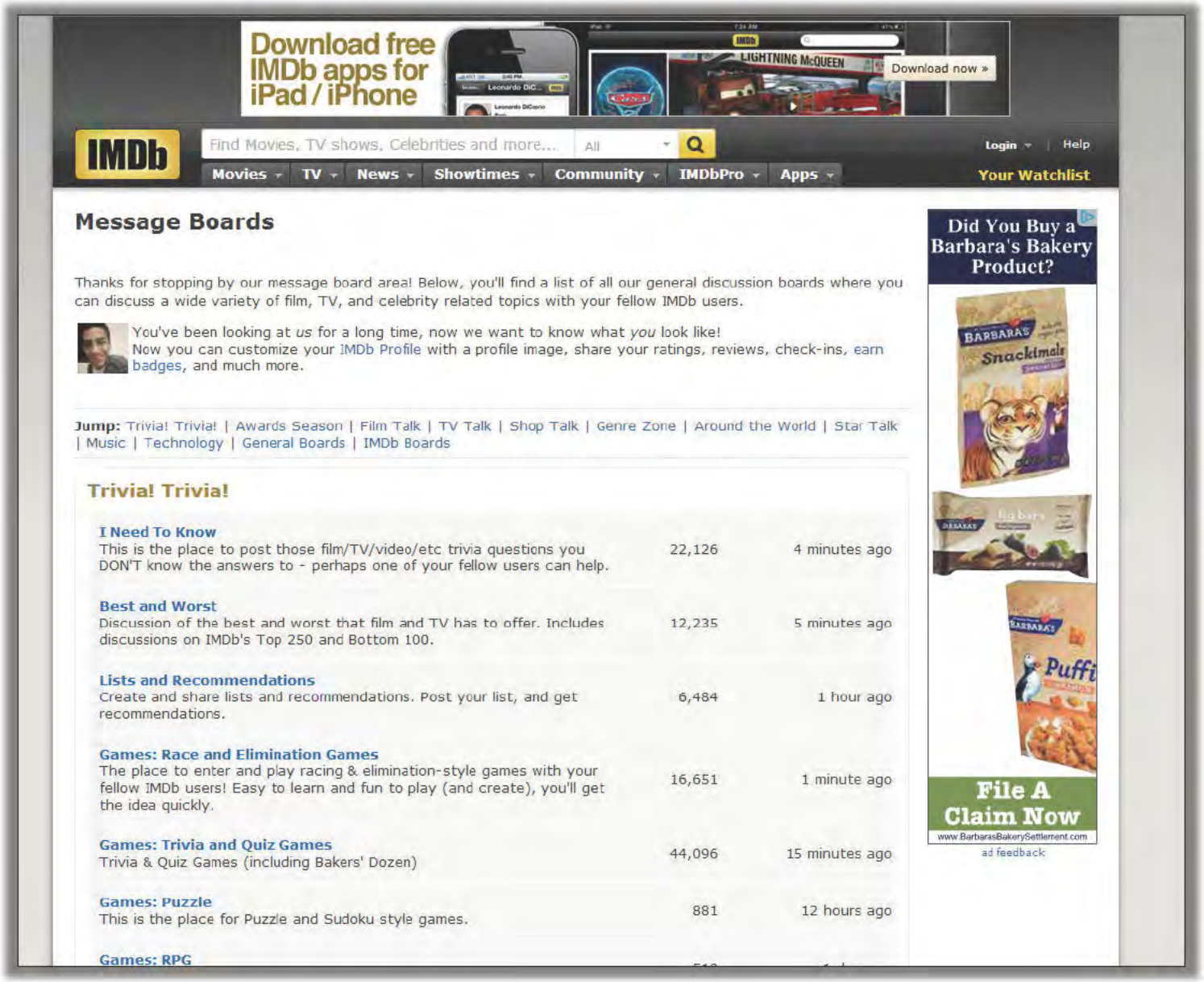
Washington Nationals
Team Front | Stats | Roster | Schedule | Lineup | Tickets

NL Central

Chicago Cubs
Team Front | Stats | Roster | Schedule | Lineup | Tickets

tickets now.
Get Your Tickets Now
Advertisement


Sign Up
Login
Search
bleacher report
MLB Full Scoreboard »
Top 10th
MIA 4
PIT 4
Top 2nd
MIL 0
SF 3
Bot 7th
CHC 1
PHI 10
Final
COL 1
NYM 2
7:05 PM
DET
CLE
8:10 PM
BOS
KAN
8:15 PM
LAD
STL
b/r NFL CFB MLB NBA NHL CBB Soccer UFC WWE Golf More
Swagger Video Blogs My Teams
Home Teams Scoreboard Fantasy Baseball Archives Top Writers Shop Newsletter
MLB
TOP 10TH BOX SCORE
4 4
BATTING: P.POLANCO PITCHING: J.HUGHES
2 3 4 5 6 7 8 9 10 R H E
MIA (43-69) 0 0 0 2 0 0 0 0 4 9 1
PIT (69-44) 0 0 0 2 0 2 0 0 4 10 1
TOP 2ND BOX SCORE
0 3
BATTING: C.GOMEZ PITCHING: T.LINCECUM
1 2 3 4 5 6 7 8 9 R H E
MIL (49-65) 0 0 0 0
SF (50-63) 3 3 4 0
BOT 7TH BOX SCORE
1 10
PITCHING: H.RONDON BATTING: J.MAYBERRY
1 2 3 4 5 6 7 8 9 R H E
CHC (50-63) 0 0 0 1 0 0 0 1 4 0
PHI (51-62) 0 2 2 6 0 0 10 12 0
FINAL BOX SCORE
1 2
W: D.GEE (8-8) L: J.MANSHIP (0-1)
S: L.HAWKINS (2)
1 2 3 4 5 6 7 8 9 R H E
COL (52-64) 0 0 0 1 0 0 0 0 0 1 8 1
NYM (52-60) 0 0 0 2 0 0 0 0 X 2 6 0
7:05PM BOX SCORE
TIGERS (67-45)
INDIANS (62-52)
8:10PM BOX SCORE
RED SOX (70-48)
ROYALS (58-53)
8:15PM BOX SCORE
DODGERS (63-50)
CARDINALS (66-47)
Did You Buy a Barbara's Bakery Product?
BARBARA'S Snackimals
BARBARA'S Puffins
File A Claim Now
www.BarbarasBakerySettlement.com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All
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Movies | TV | News | Showtimes | Community | IMDbPro | Apps
Your Watchlist
Message Boards
Thanks for stopping by our message board area! Below, you'll find a list of all our general discussion boards where you can discuss a wide variety of film, TV, and celebrity related topics with your fellow IMDb users.
You've been looking at us for a long time, now we want to know what you look like!
Now you can customize your IMDb Profile with a profile image, share your ratings, reviews, check-ins, earn badges, and much more.
Jump: Trivia! Trivia! | Awards Season | Film Talk | TV Talk | Shop Talk | Genre Zone | Around the World | Star Talk | Music | Technology | General Boards | IMDb Boards
Trivia! Trivia!
I Need To Know
This is the place to post those film/TV/video/etc trivia questions you DON'T know the answers to - perhaps one of your fellow users can help.
22,126
4 minutes ago
Best and Worst
Discussion of the best and worst that film and TV has to offer. Includes discussions on IMDb's Top 250 and Bottom 100.
12,235
5 minutes ago
Lists and Recommendations
Create and share lists and recommendations. Post your list, and get recommendations.
6,484
1 hour ago
Games: Race and Elimination Games
The place to enter and play racing & elimination-style games with your fellow IMDb users! Easy to learn and fun to play (and create), you'll get the idea quickly.
16,651
1 minute ago
Games: Trivia and Quiz Games
Trivia & Quiz Games (including Bakers' Dozen)
44,096
15 minutes ago
Games: Puzzle
This is the place for Puzzle and Sudoku style games.
881
12 hours ago
Games: RPG
Did You Buy a Barbara's Bakery Product?
BARBARA'S
Snackimals
Puffi
File A Claim Now
www.BarbarasBakerySettlement.com
ad feedback

sports.yahoo.com

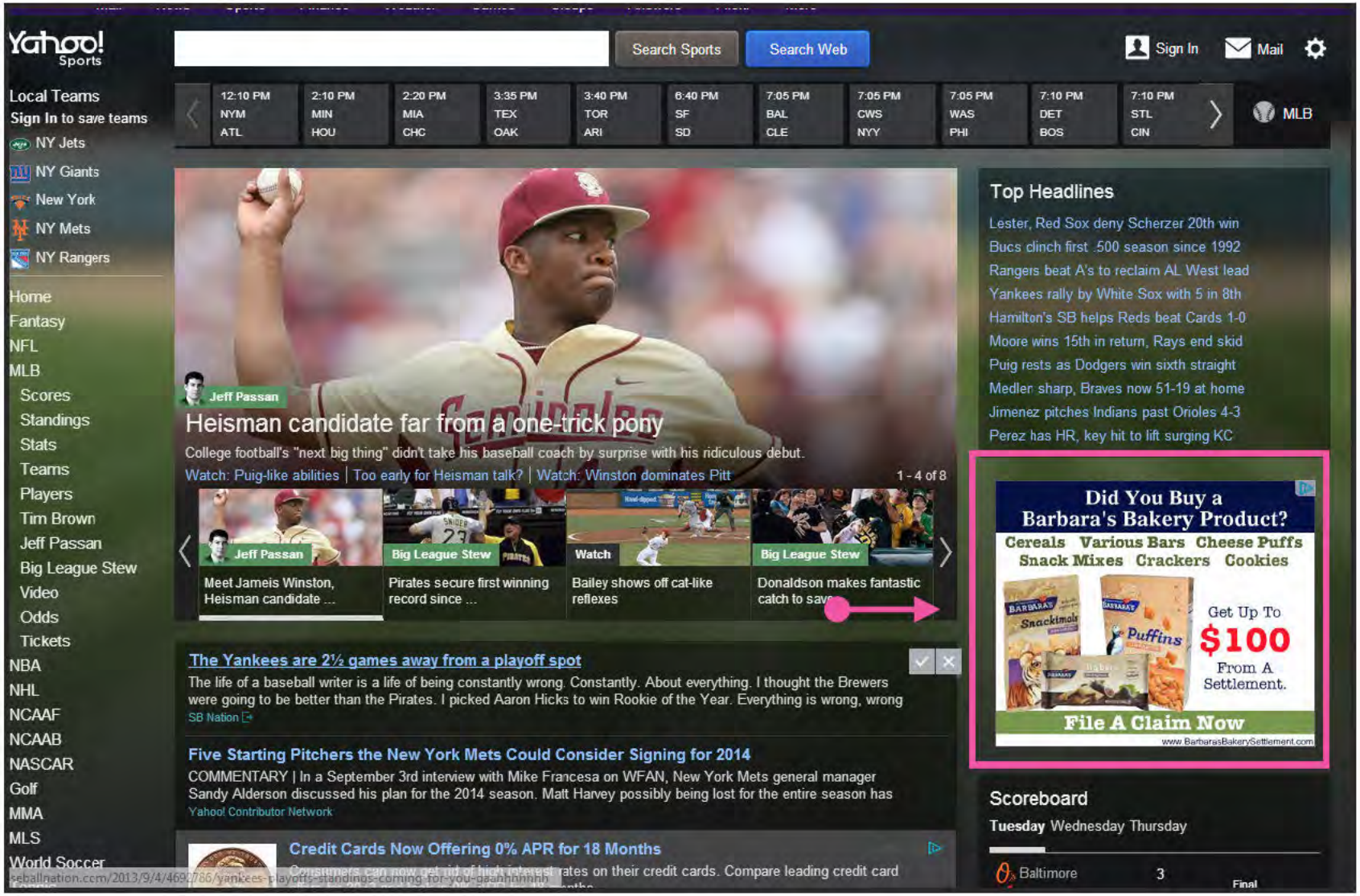


EXHIBIT 4

If You Bought a Barbara's Bakery Product

You Could Get Up to $100 From a Settlement

Includes: Barbara's Bakery Cereals, Cereal Bars, Cheese Puffs, Crackers, Fig Bars, Granola Bars, Organic Mini Cookies, Snack Mixes, and Snackimals Animal Cookies

There is a class action Settlement involving Barbara's Bakery Products. The lawsuit claims that Barbara's Bakery violated state laws regarding the marketing and sale of certain products. Barbara's Bakery denies it did anything wrong.

Who is included in the Settlement?

Anyone who bought an eligible Barbara's Bakery product from May 23, 2008 to July 5, 2013 is included in the Settlement. A full list of products is available at the website located at www.BarbarasBakerySettlement.com or by calling 1-866-590-8528.

What does the Settlement provide?

A Settlement Fund of $4 million will pay (1) money to eligible Class Members, (2) the costs of notice and administration, (3) attorneys' fees and costs and (4) a special service payment to the Class Representative. Barbara's Bakery has also agreed to change some of its business practices including modifying its product lables and advertising. Any money remaining in the Settlement Fund afer all claims are paid will be donated to charities and non-profit organizations. Additional details are in the Settlement Agreement available on the website.

How can I get a payment?

Submit a Claim Form online or by mail by **January 1, 2014**. The payment amount you receive will be based in part on the amount of products you purchased and the total number of claims made.

What are my rights?

Even if you do nothing you will be bound by the Court's decisions. If you want to keep your right to sue Barbara's Bakery yourself, you must exclude yourself from the Settlement by **October 14, 2013**. If you stay in the Settlement, you may object to it by **October 14, 2013**.

The Court will hold a hearing on **November 8, 2013** to consider whether to approve the Settlement, a request for attorneys' fees up to $1 million, and a special service payment of $2,500 from the Settlement Fund. You or your own lawyer may appear and speak at the hearing at your own expense.

For More Information: 1-866-590-8528
www.BarbarasBakerySettlement.com

EXHIBIT 5

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

If You Bought a Barbara's Bakery Product Any Time From May 23, 2008 to July 5, 2013

You Could Get Up to $100 From a Class Action Settlement

Included Products: Barbara's Bakery Cereals, Cereal Bars, Cheese Puffs, Crackers, Fig Bars, Granola Bars, Organic Mini Cookies, Snack Mixes, and Snackimals Animal Cookies

A federal court authorized this notice. This is not a solicitation from a lawyer.

- There is a Settlement in a class action lawsuit that claims Barbara's Bakery violated state laws regarding the marketing and sale of its products (*see* Question 2). Barbara's Bakery denies it did anything wrong.
- Anyone who bought an eligible Barbara's Bakery product, referred to as the "Eligible Products" and listed below under Question 7, from May 23, 2008 to July 5, 2013 is included in the Settlement. You may be entitled to a refund of up to $100.
- The Settlement will provide $4,000,000 to pay (1) money to eligible Class Members, (2) the costs of notice and administration, (3) a special service payment to the Class Representative, and (4) attorneys' fees and costs. Barbara's Bakery has also agreed to change some of its business practices.
- Your legal rights are affected whether you act or not.
- **Read this notice carefully because it explains decisions you must make and actions you must take now.**

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
DO NOTHING	Get no payment. Give up your rights.
SUBMIT A CLAIM FORM	Submit a Claim Form by **January 1, 2014** to get a payment (*see* Question 14).
EXCLUDE YOURSELF	Exclude yourself by **October 14, 2013** and get no payment from the Settlement. This is the only choice that allows you to ever be part of any other lawsuit against Barbara's Bakery about the claims in this case (*see* Question 17).
OBJECT	Write to the Court by **October 14, 2013** about why you don't like the Settlement (*see* Question 22).
GO TO A HEARING	Ask to speak in Court by **November 8, 2013** about the fairness of the Settlement (*see* Question 26).

- These rights and options—**and the deadlines to exercise them**—are explained in this notice.
- The Court in charge of this case still has to decide whether to approve the Settlement. If it does, and any appeals are resolved, payments will be distributed to those who qualify. Please be patient.

WHAT THIS NOTICE CONTAINS

BASIC INFORMATION.....3
1. Why was this notice issued?
2. What is this lawsuit about?
3. Why is this a class action?
4. Why is there a Settlement?

WHO IS PART OF THE SETTLEMENT?.....3
5. Who is included in the Settlement?
6. Are there exceptions to being included?
7. Which products are included?
8. What if I'm still not sure if I'm included?

THE SETTLEMENT BENEFITS – WHAT YOU CAN GET.....6
9. What does the Settlement provide?
10. What can I get from the Settlement?
11. What happens if there are any funds remaining?
12. What am I giving up if I stay in the Class?
13. When will I get my payment, if any?

HOW TO RECEIVE A PAYMENT.....7
14. How can I get a payment?
15. What is the claim process?
16. What if I do nothing?

EXCLUDING YOURSELF FROM THE SETTLEMENT.....8
17. How can I get out of the Settlement?
18. If I exclude myself, can I still get a payment?
19. If I don't exclude myself, can I sue Barbara's Bakery for the same thing later?

THE LAWYERS REPRESENTING THE CLASS.....9
20. Do I have a lawyer in this case?
21. How will the lawyers be paid?

OBJECTING TO THE SETTLEMENT.....9
22. How can I tell the Court if I do not like the Settlement?
23. What is the difference between objecting and asking to be excluded?

THE COURT'S FAIRNESS HEARING.....10
24. When and where will the Court decide whether to approve the Settlement?
25. Do I have to come to the hearing?
26. May I speak at the fairness hearing?

GETTING MORE INFORMATION.....11
27. How can I get more information?

BASIC INFORMATION

1. Why was this notice issued?

The Court authorized this notice because you have a right to know about a proposed Settlement, and about your rights and options, before the Court decides whether to approve the Settlement. You will be informed of the progress of this Settlement and may receive a payment if you are a Class Member and submit a completed and timely Claim Form. This notice explains the lawsuit, the Settlement, and your legal rights. Judge Charles R. Breyer of the United States District Court for the Northern District of California is overseeing this case. The lawsuit is known as *Trammell v. Barbara's Bakery, Inc.*, Case Number 3:12-cv-02664-CRB. The person who sued is called the "Plaintiff." Barbara's Bakery is the "Defendant."

2. What is this lawsuit about?

The lawsuit claims that Barbara's Bakery violated certain state laws and consumer protection statutes regarding the marketing and sale of certain products. For example, Plaintiff claims that Barbara's Bakery misrepresented the nature of certain products to consumers by labeling them as "All Natural." Plaintiff claims that these products contain ingredients that are not "All Natural." Barbara's Bakery denies any and all claims of wrongdoing and does not admit any fault, wrongdoing or liability.

Information about the Settlement is summarized in this notice. More detail is provided in the Settlement Agreement, available at www.BarbarasBakerySettlement.com.

3. Why is this a class action?

In a class action, one or more people called "Class Representatives" (in this case, Plaintiff, Richard Trammell), sue on behalf of themselves and other people who have similar claims. Together, all of these people are "Class Members." One Court resolves the issues for all Class Members in a Class Action, except for those who exclude themselves from the Class (*see* Question 17).

4. Why is there a Settlement?

The Court has not decided in favor of the Plaintiff or Barbara's Bakery. Instead, both sides have agreed to the Settlement. By agreeing to the Settlement, they avoid the costs and uncertainty of a trial, and Class Members receive the benefits described in this notice. The proposed Settlement does not mean that any law was broken or that Barbara's Bakery did anything wrong. The parties believe that the Settlement is fair, reasonable, and adequate and will provide substantial benefit to the Class.

WHO IS PART OF THE SETTLEMENT?

5. Who is included in the Settlement?

The Class includes all persons or entities that bought the Eligible Products (listed below under Question 7) from Barbara's Bakery U.S. Retailers, Barbara's Bakery, www.barbarasbakery.com, or other third-party retailers from May 23, 2008 through July 5, 2013.

6. Are there exceptions to being included?

The Settlement does not include:

- Barbara's Bakery's board members or executive-level officers, including its attorneys;
- Persons or entities who purchased the Eligible Products primarily for purposes of resale;
- Any claims for personal injury relating to the use of the Eligible Products;
- Distributors or re-sellers of the Eligible Products;
- The judge and magistrate judge and their immediate families presiding over the class action and the Court staff;
- Governmental entities;
- Any person who excludes him or herself from the Class (*see* Question 17); and
- Anyone who purchased the Eligible Products via the Internet or other remote means while not residing in the United States.

7. Which products are included?

The following Barbara's Bakery products are the Eligible Products:

CEREALS:

- **BROWN RICE CRISPS** (Fruit Juice Sweetened flavor);
- **CORN FLAKES** (Fruit Juice Sweetened flavor);
- **HIGH FIBER** (Cranberry, Flax & Granola, and Original flavors);
- **HOLE 'N OATS** (Fruit Juice Sweetened or Honey Nut flavors);
- **HONEST O'S** (Honey Nut, Multigrain, or Original flavors);
- **ORGANIC APPLE CINNAMON O'S**;
- **ORGANIC BREAKFAST O'S**;
- **ORGANIC BROWN RICE**;
- **ORGANIC BROWN RICE CRISPS**;
- **ORGANIC CORN FLAKES**;
- **ORGANIC CRISPY WHEATS**;
- **ORGANIC HONEY CRUNCH 'N OATS**;
- **ORGANIC HONEY NUT O'S**;
- **ORGANIC SNACKIMALS CEREAL** (Cinnamon Crunch or Vanilla Blast flavors);
- **ORGANIC WILD PUFFS** (Caramel, Cocoa, Cocoa Grahams, Fruity Punch, Honey Puffs, or Original flavors);
- **PUFFINS** (Cinnamon, Crunchy Cocoa, Fruit Medley, Honey Rice, Multigrain, Peanut Butter, Peanut Butter & Chocolate, or Original flavors);
- **PUFFIN PUFFS** (Crunchy Cocoa or Fruit Medley flavors);
- **SHREDDED OATS** (Cinnamon Crunch, Blueberry Burst, Multigrain, Original, Shredded Wheat, or Vanilla Almond flavors);
- **SHREDDED WHEAT**;
- **SHREDDED SPOONFULS** (Multigrain or Vanilla Blast flavors);
- **SHREDDED MINIS** (Blueberry Burst flavor);
- **TOASTED OATMEAL FLAKES** (Original flavor); and
- **ULTIMA ORGANIC** (Blue Corn, Blueberry, Flax & Granola, High Fiber, or Pomegranate flavors).

CEREAL BARS: • **MULTIGRAIN CEREAL BARS** (Apple Cinnamon, Blueberry, Cherry, Original, Raspberry, Strawberry, or Triple Berry flavors); • **FRUIT & YOGURT BARS** (Apple Cinnamon, Blueberry Apple, Cherry Apple, Strawberry Apple, or Traditional flavors); and • **PUFFINS CEREAL AND MILK BARS** (Blueberry Yogurt, French Toast, Peanut Butter Chocolate Chip, or Strawberry Yogurt flavors).	**CHEESE PUFFS:** • **BAKED CHEESE PUFFS** (Original or White Cheddar flavors); and • **CHEESE PUFFS** (Jalapeno or Original flavors).
FIG BARS: • **FIG BARS** (Apple Cinnamon, Blueberry, Multigrain, Raspberry, Traditional, Wheat Free or Whole Wheat flavors).	**GRANOLA BARS:** • **CRUNCHY ORGANIC GRANOLA BARS** (Cinnamon Crisp, Oat & Honey, Peanut Butter, or Toasted Almond flavors).
SNACKIMALS ANIMAL COOKIES: • **SNACKIMALS ANIMAL COOKIES** (Chocolate Chip, Double Chocolate, Peanut Butter, Oatmeal, Vanilla, or Snickerdoodle flavors).	**ORGANIC MINI COOKIES:** • **ORGANIC MINI COOKIES** (Chocolate, Ginger, or Oatmeal flavors).
SNACK MIXES: • **BRUSCHETTA SNACK MIX**; • **HONEY CINNAMON SNACK MIX**; • **HONEY MUSTARD SNACK MIX**; and • **SALSA SNACK MIX**.	**CRACKERS**: • **CRISP COOKIES** (Chocolate Chip, Double Dutch Chocolate Chip, Old Fashioned Oatmeal, or Traditional Short Bread flavors); • **GO GO GRAHAMS** (Chocolate, Cinnamon, Honey, or Lemon Ginger flavors); • **PIZZA AND CHEESE BITES**; • **RITE LITE ROUNDS** (Original, Poppy Seed, or Tamari Sesame flavors); and • **WHEATINES** (Cracked Pepper, Original, or Sesame flavors).

8. What if I'm still not sure if I'm included?

If you are not sure whether you are a Class Member, or have any other questions about the Settlement, visit the website, www.BarbarasBakerySettlement.com, or call the toll free number, 1-866-590-8528. You may also send questions to the Settlement Administrator at Barbara's Bakery Settlement, P.O. Box 3018, Faribault, MN 55021-2618.

THE SETTLEMENT BENEFITS – WHAT YOU CAN GET

9. What does the Settlement provide?

If the Settlement is approved and becomes final, it will provide benefits to Class Members. Barbara's Bakery will pay $4,000,000 to a Settlement Fund to make payments to Class Members who file valid claims (*see* Question 14), as well as to pay for costs associated with the notice and administration of the Settlement, attorneys' fees and costs (*see* Question 21), and a special service payment to the Class Representative (*see* Question 21). The costs of notice and administration are estimated to be $790,000.

In addition, Barbara's Bakery has agreed to change their labeling and advertising of the Eligible Products so as not to make certain claims. For example, Barbara's Bakery will not say that the Eligible Products are "All Natural," have "no artificial additives," have "no artificial flavors," and have "no artificial preservatives." The Settlement Agreement, available at www.BarbarasBakerySettlement.com, has more information.

10. What can I get from the Settlement?

You can get up to $100 if you submit a valid Claim Form. The amount of your payment will depend on the total amount of money you spent on the Eligible Products at any time from May 23, 2008 until July 5, 2013 as follows:

IF YOU SPENT:	YOU COULD RECEIVE A MAXIMUM OF:
More than $100.00	$100.00
$75.01 to $100.00	$75.00
$50.01 to $75.00	$50.00
$25.01 to $50.00	$25.00
$10.01 to $25.00	$10.00
$10.00 or less	$5.00

Payment amounts may be adjusted to ensure that all eligible Class Members receive a payment, as follows: If the total value of all approved claims is greater than the amount of money available to pay claims (after costs and fees have been deducted), eligible Class Members' payments will be reduced proportionally.

The actual amount available for each eligible Class Member will not be determined until after **January 1, 2014** and all Claims Forms have been received, and may not be determined until after the Settlement is final.

11. What happens if there are any funds remaining?

If there are any funds remaining after all claims are processed, those funds will be distributed to the following non-profit organizations: Consumers Union (www.consumersunion.org) and Action for Healthy Kids (www.actionforhealthykids.org). No remaining funds will be returned to Barbara's Bakery.

12. What am I giving up if I stay in the Class?

Unless you exclude yourself from the Settlement, you can't sue Barbara's Bakery or be part of any other lawsuit against Barbara's Bakery about the issues in this case. Unless you exclude yourself, all of the decisions by the Court will bind you. The Settlement Agreement is available at www.BarbarasBakerySettlement.com and describes the claims that you give up if you remain in the Settlement.

13. When will I get my payment, if any?

Class Members who submit valid claims will receive their payments only after the Court grants final approval to the Settlement and after any appeals are resolved (*see* "The Court's Fairness Hearing" below). If there are appeals, resolving them can take time. Please be patient.

HOW TO RECEIVE A PAYMENT

14. How can I get a payment?

To get a payment under the Settlement, you must send in a Claim Form. You may access a Claim Form and other relevant documents at www.BarbarasBakerySettlement.com. A Claim Form also is attached to this Notice. Please read the instructions carefully, and fill out the form completely and accurately. Claim Forms can be submitted two ways: electronically or by mail. Your Claim Form must be submitted electronically no later than **January 1, 2014** or by mail postmarked no later than **January 1, 2014** and addressed to:

Barbara's Bakery Settlement
P.O. Box 3018
Faribault, MN 55021-2618

15. What is the claim process?

The Settlement Administrator will review each Claim Form. Proofs of purchase are not initially required. However, in some cases you may be asked to verify your purchase(s) of any of the Eligible Products, by providing receipt(s) or other documentation. If you do not respond to these requests, it may result in the denial of your claim. You will have 35 days from the date of the Settlement Administrator's request to provide your documentation.

16. What if I do nothing?

If you are a Class Member and you do nothing, you will not get any payment from the Settlement and you will be bound by the Court's decisions, including the Settlement's release and waiver of claims you may have against Barbara's Bakery that related to the claims made in the lawsuit. To receive a payment, you must complete and submit a Claim Form (*see* Question 14).

EXCLUDING YOURSELF FROM THE SETTLEMENT

If you don't want a payment from this Settlement, but you want to keep the right to sue or continue to sue Barbara's Bakery on your own about the legal issues in this case, then you must take steps to get out of the Class. This is called excluding yourself – or it is sometimes referred to as "opting out" of the Class.

17. How can I get out of the Settlement?

To exclude yourself from the Class, you must mail a letter or written request to the Settlement Administrator. Your request must include:

1. Your name, address, and telephone number;
2. A statement that you wish to be excluded from the Class in *Trammell v. Barbara's Bakery, Inc.*, Case Number 3:12-cv-02664; and
3. Your signature (you must personally sign the letter).

Please write "exclusion request" on the lower left-hand corner of the front of the envelope.

Your exclusion request must be postmarked no later than **October 14, 2013**. Send your request to:

Barbara's Bakery Settlement
P.O. Box 3018
Faribault, MN 55021-2618

18. If I exclude myself, can I still get a payment?

No. You will not get a payment if you exclude yourself from the Settlement. If you request exclusion from the Class, then for each of the excluded Eligible Products:

- You will not be eligible for payment under the proposed Settlement;
- You will not be allowed to object to the terms of the proposed Settlement; and
- You will not be bound by any subsequent rulings entered in this case if the proposed Settlement is finally approved.

19. If I don't exclude myself, can I sue Barbara's Bakery for the same thing later?

No. If the Court approves the proposed Settlement and you do not exclude yourself from the Class, you give up (or "release") all claims that have been or could have been made in this lawsuit relating to the Eligible Products.

Upon final approval of the Settlement, Plaintiffs and Barbara's Bakery will ask the Court to enter a permanent ruling forbidding all Class Members and/or their representatives and/or personnel from engaging in the activities described above. All Class Members will be bound by this order.

THE LAWYERS REPRESENTING THE CLASS

20. Do I have a lawyer in this case?

The Court has appointed attorneys at the law firm of Ahdoot & Wolfson, P.C. to represent you and the other Class Members in this lawsuit. The lawyers representing you and the Class Members are called "Class Counsel." You will not be charged for the services of these lawyers.

You may contact Class Counsel as follows:

Robert Ahdoot / Tina Wolfson
Ahdoot & Wolfson, PC
2355 Westwood Boulevard, #337
Los Angeles, CA 90064-2109
info@ahdootwolfson.com
Telephone: 888-333-8996

You have the right to retain your own lawyer to represent you in this case, but you are not obligated to do so. If you do hire your own lawyer, you will have to pay his or her fees and expenses. You also have the right to represent yourself before the Court without a lawyer.

21. How will the lawyers be paid?

Class Counsel have not been paid anything to date for their work on this case. Class Counsel will request attorneys' fees and expenses of up to $1,000,000 to be paid out of the $4,000,000 Settlement Fund. The attorneys' motion(s) for fees, costs, and expenses and Class Representative payment will be filed on or before **September 30, 2013**. The motion(s) will be posted on the website at www.BarbarasBakerySettlement.com.

Class Counsel will also ask the Court for a special service payment of up to $2,500 for the Class Representative, Richard W. Trammell, for his work on behalf of the Class. Any special service payment will also be paid out of the $4,000,000 Settlement Fund.

OBJECTING TO THE SETTLEMENT

You have the right to tell the Court that you do not agree with the Settlement or any or all of its terms.

22. How can I tell the Court if I do not like the Settlement?

If you choose to remain a Class Member, you have a right to object to any part of the proposed Settlement. The Court will consider your views.

To object, you must send a letter stating that you object to *Richard W. Trammell v. Barbara's Bakery, Inc.*, Case Number 3:12-cv-02664. Your written objection must also include:

1. Your name, address, and telephone number;
2. A written statement of your objection(s), including any legal support and/or any supporting evidence you wish to introduce;
3. A statement of whether you intend to appear and speak at the Fairness Hearing; and
4. Your signature.

If you choose to object, in order to be considered by the Court, your written objections must be filed with the Court by **October 14, 2013** and mailed to each of the following three addresses, postmarked by **October 14, 2013**:

COURT	CLASS COUNSEL	DEFENSE COUNSEL
Clerk of the Court United States District Court Northern District of California Phillip Burton Federal Building & United States Courthouse 450 Golden Gate Avenue San Francisco, CA 94102	Robert Ahdoot Tina Wolfson Ahdoot & Wolfson, P.C. 2355 Westwood Boulevard, #337 Los Angeles, CA 90064-2109	Clement L. Glynn Glynn & Finley LLP 100 Pringle Avenue Suite 500 Walnut Creek, CA 94596

23. What is the difference between objecting and asking to be excluded?

Objecting is simply a way of telling the Court that you don't like something about the Settlement. You can only object if you stay in the Class. You will also be bound by any subsequent rulings in this case and you will not be able to file or participate in any other lawsuit based upon or relating to the claims of this lawsuit. If you object to the Settlement, you still remain a Class Member and you will still be eligible to submit a Claim Form. Excluding yourself is telling the Court that you don't want to be a part of the Class. If you exclude yourself, you have no basis to object to the Settlement and appear at the Fairness Hearing because it no longer affects you.

THE COURT'S FAIRNESS HEARING

The Court will hold a final hearing (called a Fairness Hearing) to decide whether to finally approve the Settlement. You may attend and ask to speak, but you don't have to.

24. When and where will the Court decide whether to approve the Settlement?

On **November 8, 2013** at **10:00 a.m.** the Court will hold a Fairness Hearing at the United States District Court for the Northern District of California, before the Honorable Charles R. Breyer, Senior District Judge, in Courtroom 6, Phillip Burton Federal Building & United States Courthouse, 17th Floor, 450 Golden Gate Avenue, San Francisco, California 94102.

The hearing may be moved to a different date or time without additional notice, so it is a good idea to check www.BarbarasBakerySettlement.com for updates. At this hearing the Court will consider whether the Settlement is fair, reasonable, and adequate. The Court will also decide whether to award attorneys' fees and costs, as well as a special payment to the Class Representative. If there are objections, the Court will consider them at that time. After the hearing, the Court will decide whether to approve the Settlement. We do not know how long these decisions will take.

25. Do I have to come to the hearing?

No. Class Counsel will answer questions the Court may have at the Fairness Hearing. But you are welcome to come at your own expense. Please note that the Court has the right to change the date and/or time of the Fairness Hearing without further notice. If you are planning to attend the hearing, you should confirm the date and time before going to the Court.

26. May I speak at the fairness hearing?

Yes, you may ask the Court for permission to speak at the hearing. To do so, you must file a document called a "Notice of Intention to Appear." If you or your attorney wants to appear and speak at the Fairness Hearing, you (or your attorney) must mail a Notice of Intention to Appear at the Fairness Hearing to the addresses listed above in Question 22. Your Notice of Intention to Appear at the Fairness Hearing must be filed and received by the Court, Barbara's Bakery's Counsel, and Class Counsel no later than **October 14, 2013**.

GETTING ADDITIONAL INFORMATION

27. How can I get more information?

This notice summarizes the proposed Settlement. More details are in the Settlement Agreement. For a complete, definitive statement of the Settlement terms, refer to the Settlement Agreement at www.BarbarasBakerySettlement.com. You also may write with questions to the Settlement Administrator at Barbara's Bakery Settlement, P.O. Box 3018, Faribault, MN 55021-2618 or call the toll-free number, 1-866-590-8528.

PLEASE DO NOT CALL THE COURT

Dated: **June 26, 2013**

Clerk of the Court for the United States
District Court for the Northern District of California

EXHIBIT 6

Must Be Postmarked
No Later Than
January 1, 2014

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

For Official Use Only
01

BARBARA'S BAKERY SETTLEMENT CLAIM FORM

To receive a payment, you must accurately complete this Claim Form and submit it by **January 1, 2014**. Failure to do so will result in a reduction or the denial of your Claim. You will not be given an opportunity to cure or fix any deficiencies in this claim form. Claim Forms may be submitted online at www.BarbarasBakerySettlement.com or by mail to: *Barbara's Bakery Settlement,* P.O. Box 3018, Faribault, MN 55021-2618.

A. CLASS MEMBER INFORMATION

First Name

Last Name

Street Address

City

State

Zip Code –

E-mail Address (optional)

B. PURCHASE INFORMATION

What is the total amount of your household's purchases of Eligible Products from May 23, 2008 to July 5, 2013 (see page 2 for the list of Eligible Products)? *Please check the appropriate box:*

- ☐ More than $100
- ☐ Between $75.01 and $100
- ☐ Between $50.01 and $75
- ☐ Between $25.01 and $50
- ☐ Between $10.01 and $25
- ☐ Less than $10

C. SIGN AND DATE YOUR CLAIM FORM

I declare, under penalty of perjury, that the information in this claim form is true and correct to the best of my knowledge and that I purchased the amount of the Eligible Product(s) claimed above from May 23, 2008 to July 5, 2013. I understand that my claim form may be subject to audit, verification, and Court review.

Signature | Type/Print Name | Date

Eligible Products

Cereals: • Brown Rice Crisps (Fruit Juice Sweetened flavor); • Corn Flakes (Fruit Juice Sweetened flavor); • High Fiber (Cranberry, Flax & Granola, or Original flavors); • Hole 'n Oats (Fruit Juice Sweetened or Honey Nut flavors); • Honest O's (Honey Nut, Multigrain, or Original flavors); • Organic Apple Cinnamon O's; • Organic Breakfast O's; • Organic Brown Rice; • Organic Brown Rice Crisps; • Organic Corn Flakes; • Organic Crispy Wheats; • Organic Honey Crunch 'N Oats; • Organic Honey Nut O's; • Organic Snackimals Cereal (Cinnamon Crunch or Vanilla Blast flavors);	***Cereals:*** • Organic Wild Puffs (Caramel, Cocoa, Cocoa Grahams, Fruity Punch, Honey Puffs, or Original flavors); • Puffins (Cinnamon, Crunchy Cocoa, Fruit Medley, Honey Rice, Multigrain, Peanut Butter, Peanut Butter & Chocolate, or Original flavors); • Puffin Puffs (Crunchy Cocoa or Fruit Medley flavors); • Shredded Oats (Cinnamon Crunch, Blueberry Burst, Multigrain, Original, Shredded Wheat or Vanilla Almond flavors); • Shredded Wheat; • Shredded Spoonfuls (Multigrain or Vanilla Blast flavors); • Shredded Minis (Blueberry Burst flavor); • Toasted Oatmeal Flakes (Original flavor); and • Ultima Organic (Blue Corn, Blueberry, Flax & Granola, High Fiber, or Pomegranate flavors).
Cereal Bars: • Multigrain Cereal Bars (Apple Cinnamon, Blueberry, Cherry, Original, Raspberry, Strawberry, or Triple Berry flavors); • Fruit & Yogurt Bars (Apple Cinnamon, Blueberry Apple, Cherry Apple, Strawberry Apple, or Traditional flavors); and • Puffins Cereal and Milk Bars (Blueberry Yogurt, French Toast, Peanut Butter Chocolate Chip, or Strawberry Yogurt flavors).	***Cheese Puffs:*** • Baked Cheese Puffs (Original or White Cheddar flavors); and • Cheese Puffs (Jalapeno or Original flavors).
Fig Bars: • Fig Bars (Apple Cinnamon, Blueberry, Multigrain, Raspberry, Traditional, Wheat Free, or Whole Wheat flavors).	***Granola Bars:*** • Crunchy Organic Granola Bars (Cinnamon Crisp, Oat & Honey, Peanut Butter, or Toasted Almond flavors).
Snackimals Animal Cookies: • Snackimals Animal Cookies (Chocolate Chip, Double Chocolate, Peanut Butter, Oatmeal, Vanilla, or Snickerdoodle flavors).	***Organic Mini Cookies:*** • Organic Mini Cookies (Chocolate, Ginger, or Oatmeal flavors).
Snack Mixes: • Bruschetta Snack Mix; • Honey Cinnamon Snack Mix; • Honey Mustard Snack Mix; and • Salsa Snack Mix.	***Crackers:*** • Crisp Cookies (Chocolate Chip, Double Dutch Chocolate Chip, Old Fashioned Oatmeal, or Traditional Short Bread); • Go Go Grahams (Chocolate, Cinnamon, Honey or Lemon Ginger); • Pizza and Cheese Bites; Rite Lite Rounds (Original, Poppy Seed, or Tamari Sesame flavors); and • Wheatines (Cracked Pepper, Original, or Sesame flavors).

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

RICHARD W. TRAMMELL, individually and on behalf of all others similarly situated,

Plaintiffs,

v.

BARBARA'S BAKERY, INC. a California corporation; and DOES 1-50,

Defendants

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

DECLARATION OF RICHARD TRAMMELL IN SUPPORT OF PLAINTIFF'S MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT, INCENTIVE AWARD, AND AWARD OF ATTORNEYS FEES AND COSTS

Hearing Date: November 8, 2013
Time: 10:00 A.M.
Place: Courtroom 6 (17th Floor)

The Honorable Charles R. Breyer, Presiding

Filed concurrently with Plaintiff's Notice of Motion and Motion for Final Approval of Class Action Settlement, Incentive Award, and Award of Attorneys Fees and Costs

DECLARATION OF RICHARD TRAMMELL

I, Richard Trammell, declare as follows:

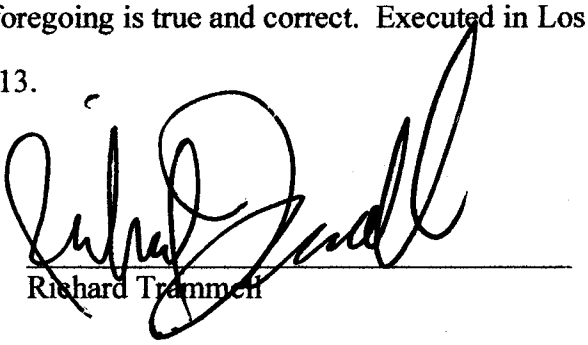
1. I am named plaintiff in the above-entitled action. I submit this declaration in support of my Motion for Final Approval of Class Action Settlement, and the request for an incentive award therein. The matters stated here are true of my own knowledge. If called upon as a witness, I could and would competently testify to these facts.

2. I assisted my counsel with the pre-filing investigation of this matter.

3. I reviewed relevant pleadings and kept in constant communication with counsel throughout this litigation.

4. I was always willing to provide both deposition and trial testimony as needed, and to assist with the case in any way necessary and appropriate

I declare under penalty of perjury that the foregoing is true and correct. Executed in Los Angeles, California this 30th day of September 2013.



Richard Trammell

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Counsel for Plaintiff
RICHARD W. TRAMMELL

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

RICHARD W. TRAMMELL, individually and on behalf of all others similarly situated,

Plaintiffs,

v.

BARBARA'S BAKERY, INC. a California corporation; and DOES 1-50,

Defendants

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

DECLARATION OF ROBERT AHDOOT IN SUPPORT OF PLAINTIFF'S MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT, INCENTIVE AWARD, AND AWARD OF ATTORNEYS' FEES AND COSTS

Date: November 8, 2013
Time: 10:00 A.M.
Place: Courtroom 6 (17th Floor)

The Honorable Charles R. Breyer, Presiding

Filed concurrently with Plaintiff's Motion for Final Approval of Class Action Settlement, Incentive Award, and Award of Attorneys' Fees and Costs

I, Robert Ahdoot, declare as follows:

1. I am an attorney licensed to practice in the courts of the State of California and in the United States District Court for the Northern District of California. I am a founding member of the law firm of Ahdoot & Wolfson, PC ("AW" or "Class Counsel"). I submit this declaration in support of my firm's Motion for Final Approval of Class Action Settlement, Incentive Award, And Award of Attorneys Fees And Costs Approval of the proposed Class Action Settlement in the above-captioned case.

2. The matters stated herein are true of my own knowledge or, where indicated, I am informed and believe that they are true. If called upon as a witness, I could and would competently testify to these facts.

3. AW began investigating the facts underlying this matter months before this action was filed. AW (i) reviewed and analyzed Barbara's Bakery, Inc.'s ("Barbara's Bakery") advertising and labeling, (ii) gathered any available substantiation and research relating to the claims made in the subject advertising, and (iii) conducted an independent investigation of the scientific and factual basis for the claims in the advertising of Barbara's Bakery products.

4. These efforts included retaining a consulting expert, who assisted in understanding the scientific issues involved in evaluating the veracity of Barbara's Bakery advertising claims.

5. Thereafter, my firm drafted a class action complaint and also drafted and sent a pre-lawsuit demand letter to Barbara's Bakery.

6. On May 23, 2012, plaintiff filed a complaint against Barbara's Bakery on behalf of himself and all others similarly situated. A First Amended Complaint (ECF Dkt. No. ("Dkt.") 5) was filed on June 28, 2012, and a Second Amended Complaint (Dkt. 29) on January 30, 2013. The Second Amended Complaint alleges violations of California's Unfair Competition Law, Cal. Bus. & Profs. Code §17200 *et seq.* ("UCL"); California's False Advertising Law, Cal. Bus. & Profs. Code §17500 *et seq.* ("FAL"); California's Consumer Legal Remedies Act, Cal. Civ. Code §1750 *et seq.* ("CLRA"); and breach of express warranty. Plaintiff sought restitution, disgorgement of revenues, injunctive relief, damages, reasonable attorneys' fees and costs, statutory pre-judgment interest, and any other relief the court deems just and proper.

7. Class Counsel engaged in extensive discovery in this matter. At the outset, the parties negotiated and were able to agree on the terms of a lengthy Stipulated Protective Order that was later issued by the Court (Dkt. 18).

8. Class Counsel propounded two sets each of interrogatories, requests for production of documents, requests for admissions, a subpoena to a third party, and engaged in meet and confer efforts with Barbara's Bakery's Counsel.

9. Through these discovery efforts, Class Counsel obtained and reviewed over thirty (30) banker's boxes of documents and approximately seventy (70) Gigabytes (GB) of data, which concerned: (i) label design and product formulation; (ii) marketing, advertising, media, and public relations; and (iii) financial information.

10. In addition, Class Counsel conducted interviews of primary Barbara's Bakery's corporate witnesses who have been involved with the Eligible Products to address the following subjects: (i) sales and marketing; (ii) labeling; (iii) finance; (iv) document collection and retention; and (v) Barbara's Bakery's efforts to eliminate GMO ingredients from its products.

11. Among other things, discovery revealed that Defendant has sold millions of the Eligible Products nationwide.

12. The Parties began discussing potential settlement early in the litigation, and counsel engaged in numerous settlement discussions as discovery proceeded.

13. When the Parties' informal attempts to settle the matter were not successful they agreed to attend mediation. The Parties then agreed that retired Northern District Judge Eugene F. Lynch of JAMS would mediate the case.

14. Class Counsel submitted a lengthy mediation brief to Judge Lynch. Thereafter, the Parties engaged in two rounds of mediation, on November 28, 2012, and again on January 11, 2013, with the assistance of Judge Lynch. The principal terms of the Settlement were agreed upon at the second of these mediation sessions.

15. Subsequently, the Parties engaged in additional extensive negotiations to finalize and memorialize all aspects of the Settlement Agreement, including each of its 10 exhibits. During this process, the Parties engaged Rust Consulting, Inc. ("Rust"), and Kinsella Media, LLC ("Kinsella") as

Settlement Administrator and Notice Administrator, respectively, to advise as to the mechanics and specifics of a notice program. Class Counsel was able to obtain Rust and Kinsella's agreement that the any and all charges resulting from any notice and administration required in this case would not exceed $875,000.

16. The notice program and each document comprising the notice were negotiated and exhaustively refined to make them easy to read and understand and to maximize the likelihood of broad Class Member participation in the claims process.

17. The settlement process was kept moving by the Court's scheduled conferences and deadlines. *See e.g.*, Dkt. Nos. 26, 31, and *Clerk's Notice* (filed on April 25, 2013). My firm and defense counsel participated in status conferences on October 12, 2012 (Dkt. 21) and on December 14, 2012 (Dkt. 26).

18. On April 25, 2013, Plaintiff filed a Stipulation of Settlement (Dkt. 37) and a Motion for Preliminary Approval of Class Action Settlement (Dkt. 36), along with exhibits and supporting declarations.

19. The Stipulation of Settlement ultimately negotiated by the Parties creates a $4 million cash Settlement Fund and provides significant non-monetary compensation, including relabeling of the Eligible Products and an unprecedented agreement to eliminate GMO ingredients from most of the Eligible Products. I am informed and believe that Barbara's Bakery has already commenced implementing the relabeling of the subject products, has amended its website, and commenced the elimination of GMO ingredients from the Eligible Products.

20. As is typical in common fund cases, cash payments will be distributed to Class Members Claimants who submit a valid Claim Form following payment of notice and settlement administration costs, attorneys' fees and expenses, and a Plaintiff service award.

21. Using the numbers of (and amounts claims by) individuals who have submitted claims as of September 27, 2013 (as set forth in the concurrently filed Declaration of Shannon Wheatman, Ph.D.), I estimate that there will not be any residual funds after distribution to the Class Members.

22. Specifically, I estimate that the Class Members' recovery would range from approximately $77.89 for those who declared that they spent $100 or more to approximately $3.89 for

those who declared that they spent $10 or less (assuming deductions for notice and administration costs at $786,350, incentive award at $2,500, and attorneys' fees and costs at $1,000,000).

23. In my experience litigating consumer class actions I believe the results achieved by the Settlement are fair, adequate, and reasonable. The benefits provided to Class Members, which provide them with a significant refund towards their purchases of the Eligible Products, exceeds many settlements of its kind. It is also noteworthy that the settlement refunds are available to Class Members without proof of purchase. This provision is important because few Class Members would retain a proof of purchase for small purchase items like cold cereal, cheese puffs, granola/fig bars, *etc*. The ever-increasing difficulty of certifying a nationwide class and maintaining certification favors final approval of this Settlement. This Settlement provides Class Members with more relief than they could reasonably expect to receive even if fully successful at trial, which would be expensive and time-consuming.

24. The Court held a hearing on the Motion for Preliminary Approval on June 21, 2013, which was attended by Tina Wolfson and me on behalf of Plaintiff, and by counsel for Barbara's Bakery. The Court granted the Motion for Preliminary Approval and denied the Motion for Preliminary Injunction (Dkt. 56). In its ruling, the Court noted that the Settlement was an "excellent settlement," a "model of good lawyering on both sides" and reflected an "excellent job of resolving the case." *See* Transcript of Proceeding (June 21, 2013), 8:10 17:20-25, a true and correct copy of which is attached hereto as **Exhibit 1**.

25. On June 26, 2013, the Court issued its 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 (Dkt. 58).

26. Immediately thereafter, Class Counsel, working with the Notice and Settlement Administrator, expended significant efforts in creating the Settlement website and ensuring the timely and correct implementation of the Notice Program described in the Declaration of Shannon Wheatman, Ph.D. in Support of the Motion for Preliminary Approval (Dkt. 36-2).

27. Thereafter, Class Counsel oversaw the dissemination of notice and ensured that the Notice Program was carried out in a timely manner pursuant to its terms. Class Counsel then drafted and filed the Motion for Final Approval of the Settlement, Incentive Award, and Award of Attorneys Fees and Costs, along with its supporting declarations and exhibits.

28. Months after this action was commenced (on May 23, 2012), and after the parties had made significant progress toward settlement, several other Plaintiffs filed similar actions: (i) *Silber v. Barbara's Bakery, Inc.*, Case No. 1:12-cv-05511-WFK-RLM (E.D.N.Y) (filed on November 5, 2012); (ii) Rojas v. Barbara's Bakery, Inc., Case No. CGC-12-525911 (San Francisco Superior Court) (filed on November 7, 2012); and (iii) *Moro v. Barbara's Bakery, Inc*., Case No. 1:12-cv-06087-WFK-RLM (E.D.N.Y.) (filed on December 11, 2012).

29. Like this action, these three actions are putative class actions that are primarily premised on Defendant's alleged false advertising of its products as "all natural," when in fact they contain genetically modified organisms ("GMOs") and other synthetic ingredients. *See, e.g.* the Complaints filed in *Silber* (Dkt. Nos. 46-2 and 46-3), *Rojas* (Dkt. 46-4), and *Moro* (Dkt. 46-5). I am informed and believe that the *Silber* and *Moro* actions are both pending before the Honorable William F. Kuntz, II in the U.S. District Court for the Eastern District of New York.

30. On May 10, 2013, counsel in the *Silber* action filed a "letter" in this action voicing their opposition to the request for injunction and stay of the subsequent actions (Dkt. 43), to which Barbara's Bakery filed a reply (Dkt. 44). After reviewing this letter, Class Counsel chose not to file a reply.

31. On May 29, 2013, the parties in *Silber*, *Rojas*, and *Moro* action filed a Motion for Intervention for the limited purpose of opposing Barbara's Bakery's Motion for Injunction (Dkt. Nos. 46, 46-1 - 46-7), along with an *ex parte* application to shorten time to have the Intervention Motion heard at the same time as the Motion for Preliminary Approval (Dkt. Nos. 47, 47-1 - 47-2). Barbara's Bakery opposed the *ex parte* application and filed a statement of non-opposition with respect to the Motion to Intervene (Dkt. Nos. 48 - 50). Plaintiff opposed the Motion to Intervene (Dkt. 51). The Court ultimately denied the Motion to Intervene as moot "in light of the fact the motion for preliminary injunction was denied" (Dkt. 56).

32. On July 31, 2013, after being informed in a status report that this Court had preliminary approved the settlement and that the notice program had begun, the Honorable William F. Kuntz, II stayed the *Moro* and *Silber* actions. Attached hereto as **Exhibit 2** is a true and correct copy of the Judge Kuntz's Order [Staying Actions].

33. With respect to *Rojas* matter, the San Francisco Superior Court website reflects that on June 25, 2013, after Barbara's Bakery filed a notice of the Settlement, the San Francisco Superior Court issued an Order to Show Cause Re Dismissal of the Rojas action with a hearing date of December 10, 2013; the Plaintiff filed a response to the OSC on July 1, 2013 and the Court has yet to rule on the OSC.

34. Class Counsel have litigated this case on a contingency basis and would receive nothing unless they successfully resolved this litigation or obtained judgment at trial. Now, after approximately a year and a half of litigation, Class Counsel should be compensated for their successful efforts from the common fund they created for the benefit of the Class.

35. From inception of work on this case through September 27, 2013, the total hours spent by AW attorneys on this matter were 887.4 hours, equating to a total lodestar amount based on the firm's billing rates of $526,129.50. The hourly rates shown below are the usual and customary rates charged for each individual in all of our cases, including class action cases. Based on my experience, the rates of attorneys in my firm are also in line with or lower than rates charged by other class action litigators with similar experienced based in Los Angeles (Tina Wolfson and I have almost twenty years of experience each, Theodore Maya eleven, and Bradley King three). *See e.g.* 2012 National Law Journal Billing Survey, true and correct copies of which is attached hereto as **Exhibit 3**; *see also* Adjusted Laffey Matrix (www.laffeymatrix.com/see.html) (last visited September 30, 2013)

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36. A breakdown of the lodestar is as follows:

Name	Position	Total Hours	Rate	Total
Tina Wolfson	Partner	224.7	$695	$156,166.50
Robert Ahdoot	Partner	285.4	$695	$198,353.00
Theodore Maya	Attorney	166.8	$625	$104,250.00
Bradley King	Attorney	210.5	$320	$67,360.00
TOTALS		**887.4**		**$526,129.50**

37. Through July 18, 2013, AW incurred a total of $13,281.43 in expenses in connection with the Litigation. These expenses are as follows:

Expense Description	Amount
Filing and Attorney Services Fees	$835.31
Expert Fees	$3,217.30
Mediation (JAMS) Fees	$4,275.00
Federal Express & Overnight Postage	$345.88
Discovery - Document Management	$841.94
Travel	$3,766.00
TOTAL EXPENSES	**$13,281.43**

38. These expenses do not include costs resulting from in-house computer research, photocopies, postage, or telephone charges.

39. The expenses pertaining to this case are reflected in the books and records of AW. These books and records are prepared from expense vouchers, check records and other documents and are an accurate record of the expense. All of the expenses listed above were reasonably incurred in the normal course of business. It is the practice of AW to charge our clients for such expenses.

40. AW has extensive experience in class action litigation, and has successfully litigated false advertising and consumer protection class actions in various jurisdictions.

41. My partner, Tina Wolfson, graduated Harvard Law School *cum laude* in 1994 and began her civil litigation career at the Los Angeles office of Morrison & Foerster, LLP, where she defended major corporations in complex actions and represented indigent individuals in immigration and deportation trials as part of the firm's *pro bono* practice. Ms. Wolfson then gained further

invaluable litigation and trial experience at the firm of Schonbrun & DeSimone, which specialized in representing plaintiffs on contingency basis in civil rights and employee rights cases.

42. I graduated from Pepperdine Law School *cum laude* in 1994 where I served as Literary Editor of the *Pepperdine Law Review*. I clerked for the Honorable Paul Flynn at the California Court of Appeals, and then began my career as a civil litigator at the Los Angeles office of Mendes & Mount, LLP, where I defended large corporations and syndicates such as Lloyds of London in complex environmental and construction-related litigation as well as a variety of other matters.

43. Theodore Maya is an attorney at AW working on this matter. He graduated from UCLA Law School in 2002 after serving as Editor-in-Chief of the *UCLA Law Review*. From July 2003 to August 2004, Mr. Maya served as Law Clerk to the Honorable Gary Allen Feess in the United States District Court for the Central District of California. Mr. Maya was also a litigation associate in the Los Angeles offices of Kaye Scholer LLP for approximately eight years where he worked on a large variety of complex commercial litigations from inception through trial. Mr. Maya was named "Advocate of the Year" for 2007 by the Consumer Law Project of Public Counsel for successful *pro bono* representation of a victim of a large-scale equity fraud ring.

44. Bradley King is an attorney at AW working on this matter. He graduated from Pepperdine University School of Law, where he served as Associate Editor of the *Pepperdine Law Review*. He worked as a law clerk for the California Office of the Attorney General, Correctional Law Section in Los Angeles and was a certified law clerk for the Ventura County District Attorney's Office. Mr. King began his legal career at a boutique civil rights law firm, gaining litigation experience in a wide variety of practice areas, including employment law, police misconduct, municipal contract, criminal defense, and premises liability cases. At AW, Mr. King focuses on consumer and employment class actions.

45. In March 1998, Tina Wolfson and I founded AW. AW is a law firm specializing in advocating consumer and employee rights. We vigorously litigate against large corporations to vindicate the rights of millions of consumers or employees in protracted, complex litigation, to successful results.

46. AW has been appointed class counsel in numerous class actions, and, as founding members, Ms. Wolfson and I have obtained extensive experience in prosecuting complex class action and representative lawsuits. We have served as plaintiffs' counsel / co-counsel or class counsel and litigated numerous class actions or representative actions against large corporate defendants involving varied consumer rights claims. The following examples of such actions have all been successfully resolved, and have or will confer millions of dollars worth of benefits to the class or the general public and/or charity beneficiaries, as well as injunctive relief:

- *Cassidy v. Reebok*, United States District Court ("USDC"), California Central District, Case No. 2:10-cv-09966-AHM.
- *Carey v. New Balance*, Mass. Dist. Case No. 1:11-cv-10632-LTS & Case No. 1:11-cv-10001-LTS.
- *Zadeh v. Chase Manhattan Bank, et al.*, San Francisco Superior Court ("SFSC") Case No. 323715.
- *Steinhaus v. American Express Travel Related Services Co., et al.*, SFSC Case No. 416248.
- *Bernard v. MBNA America Bank, et al.*, SFSC Case No. 408700.
- *Shakib v. Discover Bank, et al.*, SFSC Case No. 416194.
- *Baumsteiger v. FleetBoston, et al.*, SFSC Case No. 408698.
- *Lanchester v. Washington Mutual Bank, et al.*, SFSC Case No. 429754.
- *Mirto v. AIG/Granite State Insurance Co. et al.*, Alameda County Superior Court Case No. HG 04180408.
- *Axen v. Ginco International, et al.*, SFSC Case No. 427033.
- *Citizens for Responsible Business v. Rite Aid Corp., et al.*, SFSC Case No. 414831.

47. In addition, Ms. Wolfson and I were named as Class Counsel in a pending false advertising class action entitled *In Re Naked Juice Cases*, C.D. Cal. Case No. 2:11-cv-8276-JAK-PLA, pending before Judge Kronstadt. In *Naked Juice*, Plaintiffs averred factual allegations and causes of action similar to this case, against Naked Juice Co. of Glendora, Inc. (a Pepsico

subsidiary). Recently, Judge Kronstadt preliminarily approved a settlement in *Naked Juice* consisting of a $9 Million Settlement Fund and certain other injunctive relief.

48. In *Citizens for Responsible Business v. Rite Aid Corporation, et al.*, SFSC Case No. 414831, AW prosecuted claims of false and illegal labeling in the herbal supplement industry against 107 retailers and manufacturers, including the Rite Aid Corporation, Wal-Mart Stores, Safeway, The Vons Companies, General Nutrition Corporation, Trader Joe's Company, Wild Oats Markets, Ralphs Grocery Company, The Kroger Company, Sav-On Drugs Stores, Albertson's, Walgreen Company, Stater Bros. Markets, Longs Drug Stores, Bally's Total Fitness Corporation, Whole Foods Market, and Target Corporation, who were gleaning millions of dollars from this nationwide practice. AW was successful in completely eradicating the alleged illegal practice in the United States.

49. In prosecuting the above actions, AW litigated against some of the largest corporate defendants in the nation, represented by renowned law firms, such as Gibson Dunn, Goodwin Procter, Reed Smith, Stroock & Stroock, Kirkland & Ellis, Morrison & Foerester, Bingham McCutchen, Latham & Watkins, O'Melveny & Myers, Sidley Austin, and so on.

50. Further, AW was named a member of the Executive Committee in the consolidated actions entitled *Whitaker v. Health Net*, Case No. 2:11-cv-00910-KJM, pending in the Eastern District of California, in which plaintiffs allege violations of California law, including the Unfair Competition Law, with regard to a data breach involving Health Net and IBM. AW also was named a member of the Executive Committee in the *Sutter Medical Information Cases*, Case No. JCCP 4698 (California Superior Court, County of Sacramento).

51. In addition, A&W has filed and is prosecuting the following class actions, which are currently pending:

- *Pfeiffer vs. General Mills, Inc.*, D.N.J. Case No. 2:12-cv-03567-FSH-PS.
- *Parker v. J.M. Smucker Co.*, N.D. Cal. Case No. 13-cv-00690-SC.
- *Hill v. Robert's American Gourmet Food, LLC*, N.D. Cal. Case No. 13-cv-00696-DMR.
- *Weiss v. City of Los Angeles*, LASC Case No. BS141354.

- *Hyundai Kia Fuel Economy Litigation (Sutter v. Hyundai Moto America),* C.D. Cal. 2:13-ml-02424-GW-FFM.
- *In Re: Monsanto Company Genetically-Engineered Wheat Litigation (Brown v. Monsanto Co., Case No. 13-cv-02310-JAR-GLR (D. Kan.); Behrend, Behrend, and Knittel Farms v. Monsanto Company, No. 4:13-cv-00250-CWD (D. Id.)),* JMPL Case No. OR/2:13-cv-00951.

52. As founding members of AW, Tina Wolfson and I have also prosecuted actions for violations of wage and hour laws and other employee rights, in the form of class actions and/or representative lawsuits on behalf of wronged employees and/or the general public. Among them are the following actions:

- *Nazlou v. Answer Financial, Inc.*, LASC Case No. BC323752
- *Inganni v. Artists Group*, LASC Case No. BC328470
- *Jones v. California Pizza Kitchen (Morris)*, LASC Case No. BC195527
- *Citizens for Responsible Business v. Ming International, Inc.*, LASC Case No. BC275555
- *Gitterman v. Def Jam Records*, LASC Case No. BC 222816
- *Atwood v. Richardson Inc.*, U.S. Dist. Court Case No. CV 00-01778 GHK (Mcx)
- *Bertoli v. Katy Castings, Inc.*, LASC Case No. BC 214324

All of the above actions also were successfully resolved.

53. This summary firm resume establishes that AW has the required experience and expertise in class actions and other complex litigation in general, and in consumer rights class actions and complex litigation in particular.

54. In addition to AW's extensive experience and impressive track record in the area of consumer class action litigation, AW's work on this case shows that AW has the requisite expertise and necessary resources to be appointed Class Counsel. As described above, in the course of one year, AW conducted extensive investigation, discovery, and vigorously negotiated an excellent settlement for the Class that provides Class Members significant monetary relief, based on the full

purchase price they paid for Eligible Products, as well as non-monetary relief that fully addresses the claims in this case.

I declare under the penalty of perjury on the 30th day of September, 2013, that the foregoing is true and correct.

/s/ Robert Ahdoot
Robert Ahdoot

EXHIBIT 1

Pages 1 - 18

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

BEFORE THE HONORABLE CHARLES R. BREYER

RICHARD W. TRAMMELL, on behalf of himself and those similarly situated, Plaintiff, VS. BARBARA'S BAKERY, INC., a California corporation; and DOES 1-50, Defendants.	)	No. C 12-2664 CRB San Francisco, California Friday June 21, 2013

TRANSCRIPT OF PROCEEDINGS

APPEARANCES:

For Plaintiff: Ahdoot & Wolfson, PC
10850 Wilshire Boulevard, Suite 370
Los Angeles, California 90024
By: Tina Wolfson, Esquire
Robert Ahdoot, Esquire

For Defendant: Glynn & Finley
100 Pringle Avenue, Suite 500
Walnut Creek, CA 94596
By: Clement L. Glynn, Esquire
Jonathan A. Eldredge, Esquire

For Intervenors: Law Offices of Howard W. Rubinstein
One Embarcadero Center, Suite 500
San Francisco, California 94111
By: Benjamin M. Lopatin, Esquire

Reported By: *Katherine Powell Sullivan, CSR #5812, RPR, CRR*
Official Reporter - U.S. District Court

P R O C E E D I N G S

JUNE 21, 2013 **10:27 A.M.**

THE CLERK: Calling case C 12-2664, Richard Trammell versus Barbara's Bakery.

Appearances, Counsel.

MS. WOLFSON: Good morning, Your Honor. Tina Wolfson on behalf of plaintiff Richard Trammell.

MR. GLYNN: Good morning, Your Honor. Clement Glynn and Jon Eldredge for the defendant. We have good news. There's a settlement. The bad news, it expired during your first argument this morning.

(Laughter)

MR. LOPATIN: Good morning, Your Honor. Benjamin Lopatin appearing on behalf of the intervenors Erin Silber, Gabriel Rojas and Olympia Moro.

MR. AHDOOT: Good morning, Your Honor. Robert Ahdoot on behalf of plaintiffs.

THE COURT: All right. Good morning.

So I want to divide this into two parts. I want to deal with the preliminary -- the preliminary approval of a class settlement first, and then I want to deal with the issue of intervention and injunction and so forth secondly because while obviously there is a relationship, I don't believe that the proposed intervenors have standing to object or otherwise comment on the settlement, other than as potential class

members. And this is not the time for potential class members to object to a settlement, if they have an objection to a settlement, which I don't know whether they do or not. Might. Might not.

So the question really is, at this point, taking the first issue as to preliminary approval of the class action settlement, I've read, considered the papers. I think it's entirely adequate. It's a good settlement. It's a fair settlement. I think the notice is fine. And so I grant preliminary approval of the class action settlement.

MS. WOLFSON: Thank you, Your Honor.

THE COURT: And you pick dates and so forth, and notice periods and so forth, and I'll sign an order to that effect.

Turning now to the second aspect. And I'd like to divide that in pieces, two pieces. The first question is the defendant's motion for a preliminary injunction, and then the motion to intervene. Let's take the preliminary injunction because I've read and considered that.

Let me make sure that I understand that the injunction, the possibility of injunction or that the relief sought by injunction is not -- I'll start again.

The class action settlement, the proposed class action settlement is not contingent on the injunctive relief. Is that correct?

MR. GLYNN: Yes, Your Honor.

THE COURT: I read it. Didn't seem to be. Stands alone.

MR. GLYNN: It stands alone.

THE COURT: Okay. Turning now to the injunction, while I have some sympathy -- limited, but I have some -- sympathy for granting an injunction, that sympathy is overcome by what I really understand the law to be with respect to the relationship between the federal courts -- among federal courts, and federal courts versus state court.

I believe that under the Anti-Injunction Act and the All Writs Act and the case law, in unusual -- and I want to emphasize the term "unusual circumstances," I think this Court may have the power to grant an injunction. There are a number of enumerated cases which provide for that type of relief. I don't believe this is one of them.

I also would say that while -- and, again, I go back to the sympathy, especially since I have to deal with MDL cases all the time. And this is not one of them, but it could have been. The efficient adjudication of disputes frequently would welcome a single forum for the adjudication of a dispute as distinct from multiple forums. And the reasoning is just apparent on the face. It makes it much easier to settle a case. You're dealing with a single defendant who has to face accusations in various courts. The defendant comes to the

table and says, here is what I have. And it really is adequate, fair and so forth to resolve this entire dispute.

So I understand it from a defendant's perspective, I think, and perhaps even for efficiency purposes. I understand that. But, we have this rather complicated jurisprudence that has a dual court system to begin with, federal and state. Start with that. And, secondly, even within the same system, has multiple potential places to litigate claims.

It's very, very unusual for one federal court to enjoin another federal court in terms of pursuing claims. And, again, I go back to what the law is as it's been both interpreted by interpretation under the Ninth Circuit, especially in the *Negrete* case, and I guess it's Atlanta Coast Line -- or *Hanlon vs. Chrysler*. It seems to me that this is not an appropriate case, under the law, to grant an injunction.

So since you're behind the ball on this one, or at least the result, I'll listen to some further argument.

MR. GLYNN: Thank you, Your Honor. Appreciate that.

And I do think the Court is wrong. And both in *Hanlon* and in the *Skechers* case, the federal court recognized, the Ninth Circuit recognized the power of the trial court to issue exactly the type of injunction that we have requested here in aid of its jurisdiction, and to allow it to administer in an orderly way --

THE COURT: What do you mean by "in aid" -- I mean,

that's one of those terms of art that, obviously, the cases do say exactly what you said.

MR. GLYNN: Right.

THE COURT: In aid of jurisdiction I can issue the injunction.

MR. GLYNN: Here's the point.

THE COURT: The question in my mind is, what do you mean by it? Because what I mean by it, what I would think would be meant by it is, essentially, that I would be deprived of jurisdiction, and my jurisdiction would be substantially interfered with if I didn't issue the injunction. Neither of which I think occurs in this case.

MR. GLYNN: I think it is used in the context of describing the scope of the Court's power to carry out its functions as an Article III judge trying to protect and administer a settlement, which you've now approved.

THE COURT: And I would agree I have the power to do it --

MR. GLYNN: Okay.

THE COURT: -- as to the federal courts. I'm not sure I really -- I have to tell you, I have a serious concern as to whether I can do it with respect to state court. But I don't have to disagree with you, because I think your characterization of the federal court is correct. I have the power to enjoin the Southern District of New York and all my

friends all around the country. I have that power. Now, the question is, is that an appropriate use of my power?

MR. GLYNN: And that's what I would like to address. But I would remind the Court that both *Hanlon* and *Skechers* included injunctions of state court actions.

So let's roll back, just for a moment, and talk about it in concrete terms, and not in terms of legal jargon such as "in aid of jurisdiction."

What have we done here? There are four cases that have each gone after a singular alleged false advertisement, the description of a product as natural or all natural, which the plaintiffs in each case say is false for various related reasons.

When we were here several months ago, you mused about being the first judge who might have to decide this issue, and why should it be you. And I joked at the time, well, that would only be natural.

But the settlement we have now entered into resolves that issue. And it doesn't simply resolve it for this case. It really does resolve the issue that is at play in each of the other cases.

So as a federal Article III judge administering the settlement, you do have, certainly, the power to do it. And you're saying, Why should I? And it's the "why should I" that I would like to address.

To anything that goes on in the other cases, should they be prosecuted -- I don't know if they will -- is simply something that detracts from the class, the national class which you are now administering. That national class needn't be protected in any of the other three cases. They have been amply protected in this settlement.

And as you're seen from your review, this is not a coupon settlement, this is not a gimmick-ridden settlement. It is robust.

THE COURT: I think it is an excellent settlement.

MR. GLYNN: And I think anybody looking at it, and each member of the class who will now begin the process of receiving notice, will likewise understand that it's a little better than the settlement notice that I once got, where I filled out the form and still have to this day a check for two cents. I'm hoping that it will increase in value over time.

I also used to give, in parochial school, to what I'm sorry to say then the pagan babies. And we set up these accounts. And somewhere, if it hasn't escheated to the State, I have an account that's worth millions.

Okay. But back to serious matters. So the issue is, we have not done a narrow or stingy settlement. It is robust and it's now been approved.

So should we then -- does it make sense to your administration of this settlement agreement to have continuing

litigation on behalf of the same class which has now been protected by this settlement and will receive its remedy under the settlement?

And let me add one more piece to that. You asked whether it's contingent. And I answered directly, it's not. But it is very common, in my experience, for defendants in cases in comparable situations, where you have a number of people who at different times have tried to make the same claim, for a court to receive an injunction motion and to grant the injunction for the very practical reasons that I've described for you.

In this settlement, you'll note there are two aspects besides the monetary fund, which itself is substantial. One is the injunctive relief, which really changes all of the packaging to remove all of the claims of "natural." And the second, which is more of an aspirational aspect of the settlement, is to use good faith to obtain non-GMO sourcing for the product.

And I want to report to the Court -- and this, again, is relevant to your question, why should you -- I want to report to the Court where we are. As of this moment, we are way ahead of the schedule set forth in the settlement agreement. Thirty-one of the 35 products have already had their packaging converted so that all reference to "natural" has been removed.

We have more time than that for practical, real-world reasons under the settlement agreement, but we have gone at

that with tremendous energy and we are very close. And I'm told by August the packaging conversion will be completed.

And although not required or even referenced in the settlement, my client has provided financial incentives in the way of rebates on existing shelve inventory that has the old packaging, so that to move it off the shelves as quickly as possible and to accomplish the transformation of the packaging that more quickly.

I misspoke. I said 31 of 35. That number is as to my second point. The packaging is well underway and will be completed, I am told by mid-August. As to the more aspirational part of the settlement agreement, the conversion to non-GMO sources, that is where we have already obtained certification from the Non-GMO Project, which is referenced in the settlement agreement, that 31 of our 35 products already have converted to non-GMO sources.

We could have argued that case to this Court with a straight face, and vigorously for many, many months to come. We could have had the pleasure of coming in on your law and motion calendar and fought every issue known to man and woman, and spent your time and ours in that endeavor.

Instead, we have entered into a very significant and comprehensive settlement, the terms of which we are aggressively ahead of schedule on. And we've even gone beyond the terms of the settlement in terms of the coupons -- or

the -- whatever the financial incentives to people to buy the existing inventory.

And I would submit that -- I turn the question around. If you did enjoin, if you did issue the injunction, so that you could administer this class settlement --

THE COURT: I can still administer the class settlement.

MR. GLYNN: The question is, if you did issue the injunction, how would that harm the class?

THE COURT: Well, they're about to come in and say, you're interfering with our -- with our litigation; we're going to get a better result or a different result; or, we have a number of options open to us, and we wish to litigate those options.

MR. GLYNN: We should hear from them, but that's not what they've said. They've said specific things.

THE COURT: Yeah?

MR. GLYNN: They've said, for instance, that they think they can establish an earlier class period. That's not for you to decide. And your injunction --

THE COURT: No, but you're asking the question. You're asking the question why -- the question, you say, well, what harm by granting the injunction?

What I'm saying is that, they see harm in their inability to proceed in the various courts around the country. And

they're not seeking -- I mean, their choices are still available. Their members, their people, their clients can join in the settlement. They can benefit from the settlement.

MR. GLYNN: They don't join. They opt out or they're in it.

THE COURT: Well, I mean -- okay. They're either affected by it or they're not affected by it. I guess that's a better way of putting it.

MR. GLYNN: They are part of the class that you have now preliminarily approved.

THE COURT: Fine. Okay. So --

MR. GLYNN: And they get --

THE COURT: They are impacted by it.

MR. GLYNN: They are benefited by it.

THE COURT: Okay. So be it. They're impacted by it. And the settlement which -- that's why I sort of jumped in on you because if I deny your motion for an injunction, I'm still administering this settlement. That's not going to be going away. It's just that their litigation is going to be operating in other courts.

MR. GLYNN: No. This is what I'm trying to explain.

THE COURT: Go ahead, because I'm not getting that part.

MR. GLYNN: Okay. Any member of the class is free to opt out and to litigate their claims on an individual basis.

If they don't opt out, this is a national class that encompasses the same people who are litigants in these other cases. That's the point.

Do they have the ability, while you administer this class settlement, to move for class certification there and so that we have a judge in New York who says, well, I'm going to administer while Breyer is administering in San Francisco?

THE COURT: That should be his or her option, shouldn't it?

In other words, the judge in New York, whoever judge that judge may be, can look at it and say, I think you're really covered by the settlement in the San Francisco action and so I'm not going to certify the class; or I'm going to do this; or I'm going to wait; or whatever that judge says. You know, or disagrees with whatever I've said.

Here's the problem that I think you're confronted with: That absent an MDL, which this is not, and in recognition -- and I'm now talking about federal actions, not state, because I think state presents a whole host of problems. And that's what the *Negrete* case said. The *Negrete* case actually said that the judge was wrong to try to enjoin the state court proceedings. I read it. In front of me. Wrong. That the Anti-Injunction Act prevents it.

So, now, just talking about the federal actions, the option always was, hey, let's have an MDL, same issues are

there, it's in different cases, and we'll go to California or go wherever the MDL panel sends us, and for pretrial purposes and settlement purposes, it will be in front of one judge. That makes a lot of sense. But that's not this case because it's not presented as an MDL. It's just not.

MR. GLYNN: Of course --

THE COURT: That's the option.

MR. GLYNN: No, it's not an MDL, but it needn't be under the All Writs Act.

Let me just remind you, because you've got this talented group of jurors over here, and I'm sure that they will be able to help remind you of this too.

Negrete there was no settlement.

THE COURT: Pardon?

MR. GLYNN: There was no settlement in *Negrete*.

THE COURT: Yeah.

MR. GLYNN: That's an important point. Why would a court, not confronted by a settlement, be asked --

THE COURT: But I don't see, I don't see in the language of the case something which suggests that if it were a settlement in the case the jurisprudence would be entirely different.

MR. GLYNN: Well, I think it's -- we typically look at the facts of the case in order to understand the context of the judge's statements. And I would never quote you out of context

either.

THE COURT: I'm always quoted out of context. And the context continually changes. However, the law doesn't change.

The question is: Does this set of facts make a difference in connection with the interpretation of the law? And I don't think it does.

MR. GLYNN: *Skechers* is a case from the Ninth Circuit where a state court was enjoined, which is very comparable in this case in terms of the settlement agreement and the injunction language that was issued.

Let me just read to you --

THE COURT: Sure.

MR. GLYNN: -- from *Negrete*, because context and facts, as we know as lawyers and judges, is everything. And this is at page --

THE COURT: Now on *Negrete*?

MR. GLYNN: I'm in *Negrete*, which the Court has addressed. This is at page 1099, of the opinion discussing the All Writs Act. It says:

"Indeed, the lack of cases in which the All Writs Act has been used to enjoin settlement efforts in another federal court is telling. It is clear that the Act is generally used to prohibit activities in another court that threaten to undermine a pending settlement in the enjoining court. When the Act has been used

to block settlement efforts in another court, it is typically because the party was deliberately using that forum to circumvent a pending settlement agreement in the enjoining court."

We have a settlement agreement in the enjoining court. We have -- you have approved it. We should not have to litigate with the same class members the same issues in another court. That's why the All Writs Act empowers you to issue an injunction to protect us against multiple proceedings involving issues that have now been settled.

So that is why I would implore the Court to think further on this issue and to reflect on the fact that if there was something that we were not protecting in this settlement, fine, let's hear it. Let's hear it from the intervenors, if they're -- whoever they are, and whoever is pro hoc'd and whoever isn't pro hoc'd, let's hear it.

But we shouldn't have to litigate the issues that we spent a lot of time and effort and money settling. We shouldn't now go in stereo while you're dealing with the carrying out of the settlement. We shouldn't have to be litigating in three other forums. That's why the All Writs Act was issued in the first instance.

And I would refer the Court again to *Skechers* and *Hanlon*. They both do support your exercise of your power to protect the defendant and to protect the integrity of the class as you

administer the settlement.

THE COURT: Submitted?

MR. GLYNN: Well, not unless you agree with me.

(Laughter)

THE COURT: Well, I'm sorry, I don't.

MR. GLYNN: Would the Court at least agree to look anew at *Negrete* and the two other cases that --

THE COURT: I've looked at them. I've looked at them. I understand your argument. I understand your policy considerations. And I appreciate them. There are contravening considerations.

And, you know, I'm just saying that I'm looking at the law as I understand it and interpret it. I don't think this would be an appropriate use of the Court's injunctive powers, so I'm denying your request.

MR. GLYNN: Thank you for hearing it.

THE COURT: And I'm also denying the intervenors' request to intervene as being moot, in light of the fact that I'm not enjoining any of their actions.

I'm hopeful that when they go back to their various jurisdictions they'll reconsider any opt-outs that they may see in the cards, because I think you have done, plaintiffs and defense here, an excellent job of resolving the case.

I think that it's a model of good lawyering on both sides in an effort -- and you're right. I mean, you could have come

in or they could have come in and fought everything tooth and nail. There are a lot of issues that are novel in this, somewhat novel, some cutting edge of, you know, the law in certain areas. And I think that both the defendant and the plaintiffs' counsel has done a superb job in this case. But I'm denying.

MR. GLYNN: Thank you, Your Honor.

THE COURT: Okay.

MR. LOPATIN: Thank you, Your Honor.

MR. AHDOOT: Do we need to pick a final hearing date today or should we just indicate one in the preliminary approval order?

THE COURT: Just put it in the order.

(At 10:53 a.m. the proceedings were adjourned.)

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CERTIFICATE OF REPORTER

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

DATE: Wednesday, July 3, 2013

Katherine Sullivan

Katherine Powell Sullivan, CSR #5812, RMR, CRR
U.S. Court Reporter

EXHIBIT 2

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

ERIN SILBER,	:	ORDER
	:	12-cv-5511 (WFK) (RLM)
Plaintiff,	:	
	:	
-against-	:	
	:	
BARBARA'S BAKERY, INC.,	:	
	:	
Defendant.	:	
OLYMPIA MORO,	:	12-cv-6087 (WFK) (RLM)
	:	
Plaintiff,	:	
	:	
-against-	:	
	:	
BARBARA'S BAKERY, INC.,	:	
	:	
Defendant.	:	

WILLIAM F. KUNTZ, II, United States District Judge

The parties have recently apprised this Court of the status of an action related to the above captioned actions: *Trammell v. Barbara's Bakery, Inc.*, Case No. 3:12-cv-2664 (N.D. Cal. May 23, 2012) (Breyer, J.). *See* Dkt. Nos. 42, 43, and 44. On June 24, 2013, the Northern District of California ordered preliminary approval of the *Trammell* parties' proposed nationwide class settlement and, as of July 5, 2013, the class notice process has begun in that litigation.

"It is well settled that district courts have the inherent power, in the exercise of discretion, to issue a stay when the interests of justice require such action." *Volmar Distrib., Inc. v. New York Post Co., Inc.*, 152 F.R.D. 36, 39 (S.D.N.Y. 1993) (Conner, J.) (citing, *inter alia*, *Kashi v. Gratsos*, 790 F.2d 1050, 1057 (2d Cir. 1986)); *see also Louis Vuitton Malletier S.A. v. LY USA,*

Inc., 676 F.3d 83, 99–100 (2d Cir. 2012). "As part of its general power to administer its docket, a district court may stay . . . a suit that is duplicative of another federal suit." *Curtis v. Citibank, N.A.*, 226 F.3d 133, 138 (2d Cir. 2000). "When deciding whether to grant a stay, courts consider five factors: (1) the private interests of the plaintiffs in proceeding expeditiously with the civil litigation as balanced against the prejudice if delayed; (2) the private interests of and burden on the defendants; (3) the interests of the courts; (4) the interests of persons not parties to the civil litigation; and (5) the public interest." *Volmar*, 152 F.R.D. at 39.

Upon consideration of these five factors and "the equities of the situation," *Curtis*, 226 F.3d at 138, this Court finds that a stay of these actions is clearly warranted. The preliminarily approved nationwide class in *Trammell* includes within it the putative classes identified by Silber and Moro. The *Trammell* settlement contemplates relief identical to the relief sought by the Plaintiffs in *Silber* and *Moro*—removal of references to "natural" and "all natural" in Defendant's labeling and marketing. To the extent Silber or Moro believe additional relief is necessary to adequately remedy their claims, they may file an objection to the *Trammell* settlement. Defendant should not be compelled to defend duplicative—and potentially inconsistent—litigation. For all these reasons, as well as the particularly timely interest in conserving judicial resources, this Court stays both of the above captioned actions.

SO ORDERED

Dated: Brooklyn, New York
July 31, 2013

s/WFK

HON. WILLIAM F. KUNTZ, II
United States District Judge

EXHIBIT 3

ALM LEGAL INTELLIGENCE
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2012 NLJ Billing Survey

Firm Name	Location	Partner Billing Rate High	Partner Billing Rate Low	Associate Billing Rate High	Associate Billing Rate Low	Associate Billing Rate Average	Partner Billing Rate Average	Associate Billing Rate Med	Partner Billing Rate Med	Firmwide Billing Rate Med
Adams and Reese	New Orleans	$595.00	$275.00	$305.00	$175.00	$250.00	$375.00	250	375	320
Best Best & Krieger	Riverside, CA	$625.00	$310.00	$390.00	$225.00	$250.00	$435.00	250	435	390
Brinks Hofer Gilson & Lione	Chicago	$835.00	$325.00	$460.00	$190.00	$325.00	$560.00	325	560	385
Bryan Cave	St. Louis	$795.00	$390.00	$550.00	$200.00	$373.00	$553.00	373	553	480
Butzel Long	Detroit	$750.00	$290.00	$425.00	$210.00	$234.00	$363.00	234	363	313
Cozen O'Connor	Philadelphia	$970.00	$320.00	$575.00	$235.00	$345.00	$513.00	345	513	440
Dickinson Wright	Detroit	$585.00	$285.00	$280.00	$205.00					
Dickstein Shapiro	Washington	$1250.00	$560.00	$570.00	$235.00	$460.00	$700.00	460	700	580
Dinsmore & Shohl	Cincinnati	$650.00	$180.00	$325.00	$130.00	$225.00	$380.00	225	380	310
DLA Piper	New York	$1200.00	$550.00	$760.00	$335.00	$530.00	$775.00	530	775	635
Dorsey & Whitney	Minneapolis	$835.00	$305.00	$420.00	$200.00	$275.00	$525.00	275	525	410
Dykema Gossett	Chicago	$675.00	$395.00	$465.00	$235.00	$305.00	$505.00	305	505	415
Epstein Becker & Green	New York	$750.00	$330.00	$455.00	$215.00	$330.00	$535.00	330	535	435
Fisher & Phillips	Atlanta	$565.00	$350.00	$395.00	$215.00	$305.00	$430.00	305	430	410
Foley & Lardner	Milwaukee	$875.00	$390.00	$605.00	$200.00	$370.00	$570.00	370	570	495
Fox Rothschild	Philadelphia	$760.00	$340.00	$480.00	$200.00	$310.00	$500.00	310	500	435
Frost Brown Todd	Cincinnati	$525.00	$205.00	$275.00	$150.00	$205.00	$350.00	205	350	295
Gardere Wynne Sewell	Dallas	$795.00	$395.00	$525.00	$235.00	$350.00	$565.00	350	565	485
Gibbons	Newark, NJ	$815.00	$395.00	$450.00	$285.00	$320.00	$500.00	320	500	450
Harris Beach	Rochester, NY	$625.00	$285.00	$350.00	$175.00	$250.00	$400.00	250	400	350
Hiscock & Barclay	Syracuse, NY	$650.00	$235.00	$275.00	$175.00	$225.00	$441.00	225	441	361
Hogan Lovells	Washington	$1200.00	$545.00	$655.00	$310.00	$465.00	$750.00	465	750	625

Firm Name	Location	Partner Billing Rate High	Partner Billing Rate Low	Associate Billing Rate High	Associate Billing Rate Low	Associate Billing Rate Average	Partner Billing Rate Average	Associate Billing Rate Med	Partner Billing Rate Med	Firmwide Billing Rate Med
Holland & Hart	Denver	$695.00	$275.00	$400.00	$180.00	$268.00	$420.00	268	420	360
Holland & Knight	Washington	$985.00	$315.00	$575.00	$200.00	$310.00	$560.00	310	560	490
Husch Blackwell	St. Louis	$890.00	$240.00	$445.00	$185.00	$235.00	$405.00	235	405	355
Kelley Drye & Warren	New York	$950.00	$450.00	$600.00	$285.00	$450.00	$660.00	450	660	550
Knobbe Martens Olson & Bear	Irvine, CA	$760.00	$425.00	$420.00	$295.00	$330.00	$525.00	330	525	380
Lathrop & Gage	Kansas City, MO	$595.00	$285.00	$385.00	$205.00	$245.00	$410.00	245	410	355
Lewis and Roca	Phoenix	$725.00	$410.00	$450.00	$225.00	$330.00	$520.00	330	520	470
Locke Lord	Dallas	$1285.00	$455.00	$600.00	$265.00	$400.00	$655.00	400	655	560
McAfee & Taft	Oklahoma City	$500.00	$250.00	$265.00	$165.00	$215.00	$375.00	215	375	335
McDonald Hopkins	Cleveland	$595.00	$310.00	$370.00	$185.00	$270.00	$440.00	270	440	380
McElroy, Deutsch,	Morristown, NJ	$575.00	$300.00	$325.00	$190.00	$255.00	$385.00	255	385	300
McKenna Long &	Atlanta	$830.00	$375.00	$560.00	$215.00	$395.00	$550.00	395	550	455
Michael Best & Friedrich	Milwaukee	$650.00	$245.00	$350.00	$210.00	$265.00	$425.00	265	425	380
Miles & Stockbridge	Baltimore	$700.00	$320.00	$350.00	$230.00	$300.00	$460.00	300	460	405
Miller & Martin	Chattanooga, TN	$630.00	$250.00	$285.00	$185.00	$225.00	$385.00	225	385	340
Nelson Mullins Riley & Scarborough	Columbia, SC	$850.00	$230.00	$370.00	$160.00	$258.00	$420.00	258	420	330
Patton Boggs	Washington	$990.00	$425.00	$570.00	$240.00	$435.00	$665.00	435	665	550
Perkins Coie	Seattle	$910.00	$290.00	$605.00	$220.00	$365.00	$560.00	365	560	485
Polsinelli Shughart	Kansas City, MO	$650.00	$300.00	$325.00	$210.00	$260.00	$390.00	260	390	350
Rutan & Tucker	Costa Mesa, CA	$650.00	$340.00	$425.00	$200.00					
Saul Ewing	Philadelphia	$800.00	$335.00	$510.00	$225.00	$310.00	$500.00	310	500	450
Schulte Roth & Zabel	New York	$995.00	$785.00	$705.00	$295.00	$585.00	$895.00	585	895	605
Sedgwick	San Francisco	$587.00	$189.00	$420.00	$157.00	$260.00	$361.00	260	361	299
Shumaker, Loop &	Toledo, OH	$570.00	$280.00	$325.00	$210.00	$255.00	$390.00	255	390	375
Shutts & Bowen	Miami	$635.00	$250.00	$370.00	$190.00	$263.00	$415.00	263	415	380
Stoel Rives	Portland, OR	$655.00	$300.00	$435.00	$200.00	$276.00	$463.00	276	463	400
Strasburger & Rice	Dallas	$649.00	$213.00	$385.00	$190.00	$243.00	$402.00	243	402	397
Sullivan & Worcester	Boston	$900.00	$500.00	$540.00	$320.00	$430.00	$670.00	430	670	570
Thompson & Knight	Dallas	$900.00	$440.00	$480.00	$260.00	$365.00	$595.00	365	595	530
Thompson Coburn	St. Louis	$750.00	$330.00	$460.00	$200.00					

Firm Name	Location	Partner Billing Rate High	Partner Billing Rate Low	Associate Billing Rate High	Associate Billing Rate Low	Associate Billing Rate Average	Partner Billing Rate Average	Associate Billing Rate Med	Partner Billing Rate Med	Firmwide Billing Rate Med
Ulmer & Berne	Cleveland, OH	$615.00	$265.00	$395.00	$195.00	$295.00	$420.00	295	420	350
Vedder Price	Chicago	$835.00	$410.00	$450.00	$275.00	$350.00	$510.00	350	510	460
Winstead	Dallas	$645.00	$375.00	$425.00	$215.00	$320.00	$475.00	320	475	410