

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION**

**TAMAR DAVIS LARSEN AND ARAN  
EISENSTAT, on behalf of themselves and all  
others similarly situated,**

**Plaintiffs,**

**v.**

**TRADER JOE'S COMPANY, a California  
Corporation,**

**Defendant.**

Case No. 3:11-cv-05188-WHO

**ORDER GRANTING PRELIMINARY  
APPROVAL OF CLASS ACTION  
SETTLEMENT**

Hon. William H. Orrick  
Courtroom 2, 17th Floor

1 The parties to this litigation have stipulated to and entered into a Stipulation of Class Action  
2 Settlement Agreement (“Agreement”) dated February 3, 2014, which if approved, would resolve this  
3 putative class action. Plaintiffs Tamar David Larsen and Aran Eisenstat filed a motion for  
4 preliminary approval of the Agreement. Defendant does not oppose the motion, and supports  
5 preliminary approval of the Agreement by the Court.

6 The Court has read and considered the Agreement (Docket No. 81-1) and all exhibits thereto,  
7 including the Class Notice and Claim Form, and finds there is sufficient basis for: (i) granting  
8 preliminary approval of the Agreement; (ii) certifying the Settlement Class for settlement purposes  
9 only; (iii) appointing Plaintiffs Tamar Davis Larsen and Aran Eisenstat as Class Representatives and  
10 their counsel as Co-Lead Counsel for the Settlement Class; (iv) directing that notice be disseminated  
11 to the Settlement Class; and (v) setting a hearing at which the Court will consider whether to grant  
12 final approval of the Agreement.

13 The capitalized terms used in this Order are defined in the Agreement unless otherwise  
14 defined herein.

15 The Court now GRANTS the motion for preliminary approval and makes the following  
16 findings and orders:

17 Preliminary Approval of Settlement

18 1. The Court preliminary approves the Agreement, finding that its terms appear  
19 sufficient, fair, reasonable and adequate to the Settlement Class, subject to the Final Approval  
20 Hearing described below. The Court finds that the Agreement contains no obvious deficiencies, that  
21 the Parties entered into the Agreement in good faith, following an arm’s-length negotiation between  
22 their respective counsel, and that the Agreement is sufficiently within the range of reasonableness  
23 such that Class Notice of the Agreement should be disseminated to the Settlement Class.

24 Class Certification

25 2. The Court preliminary certifies, for settlement purposes only, the following  
26 Settlement Class pursuant to Rule 23(b)(3) of the Federal Rules of Civil Procedure:

27 All consumers in the United States who, on or after October 24, 2007 through Preliminary  
28 Approval, made retail purchases of one or more of the Products that were labeled “All Natural” or

1 “100% Natural” and also contained one or more of the following ingredients: ascorbic acid, cocoa  
2 processed with alkali, sodium acid pyrophosphate, vegetable mono- and diglycerides, and xanthan  
3 gum. Excluded from the Settlement Class are: (i) Trader Joe’s Company (“Trader Joe’s”) and its  
4 employees, principals, officers, directors, agents, affiliated entities, legal representatives, successors  
5 and assigns; (ii) the judges to whom this action has been or is assigned and any members of their  
6 immediate families; and (iii) all consumers who timely filed a Request for Exclusion from the  
7 Settlement Class (“Settlement Class”).

8 3. The Court finds that Plaintiffs Tamar Davis Larsen and Aran Eisenstat will fairly and  
9 adequately protect the interests of the Settlement Class and approves Plaintiffs as Class  
10 Representatives.

11 4. Having determined that the requirements of Rule 23(g) of the Federal Rules of Civil  
12 Procedure are fully satisfied by such appointment, the Court appoints the following law firms to  
13 serve as Co-Lead Counsel on behalf of the Settlement Class: FEINSTEIN DOYLE PAYNE &  
14 KRAVEC, LLC, 429 Forbes Avenue, Allegheny Building, 17th Floor, Pittsburgh, Pennsylvania  
15 15219; LAW OFFICES OF JANET LINDNER SPIELBERG, 12400 Wilshire Boulevard, Suite 400,  
16 Los Angeles, California 90025; and BRAUN LAW GROUP, P.C., 10680 West Pico Boulevard,  
17 Suite 280, Los Angeles, California 90064.

18 5. The Court finds that, for purposes of settlement only, the requirements of Rule 23 of  
19 the Federal Rules of Civil Procedure are met by the Settlement Class. Joinder of all Settlement Class  
20 Members in a single proceeding would be impracticable, if not impossible, because of their numbers  
21 and dispersion. Common issues exist among Settlement Class Members and predominate over  
22 questions affecting only individual Settlement Class Members’ claims regarding whether Trader  
23 Joe’s misbranded or mislabeled certain of its products by using the terms “All Natural” and/or  
24 “100% Natural” even though they contained allegedly synthetic ingredients. Plaintiffs’ claims are  
25 typical of those of the Settlement Class, in that: (i) the interests of the Plaintiffs are consistent with  
26 those of the Settlement Class; (ii) there are no apparent conflicts between or among the named  
27 Plaintiffs and the members of the Settlement Class; (iii) the Plaintiffs have been and are capable of  
28 continuing to be an active participant in both the prosecution of, and the negotiations to settle, the

1 Action; and (iv) the Plaintiffs and the Settlement Class are represented by qualified, reputable  
2 counsel who are experienced in preparing and prosecuting class actions, including those involving  
3 the sort of practices alleged in the Complaint. In accordance with the Supreme Court's holding in  
4 *Amchem Prods. v. Windsor*, 521 U.S. 591, 620 (1997), this Court need not address whether this case,  
5 if tried, would present issues of manageability under Rule 23(b)(3)(D). Finally, a class settlement is  
6 superior to other available methods for a fair resolution of the controversy.

7 Notice to Potential Settlement Class Members

8 6. The Court hereby approves the form and procedure for disseminating notice of the  
9 proposed settlement to the Settlement Class as set forth in the Agreement. The Court finds that the  
10 notice plan contemplated constitutes the best notice practicable under the circumstances; is  
11 reasonably calculated, under the circumstances, to apprise Settlement Class Members of the  
12 pendency of the Action and their right to object to the proposed settlement or opt out of the  
13 Settlement Class; and constitutes valid, due and sufficient notice to the Settlement Class in full  
14 compliance with the requirements of applicable law, including the Due Process Clause of the United  
15 States Constitution and Rules 23(c) and (e). In addition, the Class Notice clearly and concisely  
16 states in plain, easily understood language: (i) the nature of the action; (ii) the definition of the  
17 certified Settlement Class; (iii) the claims and issues of the Settlement Class; (iv) that a Settlement  
18 Class Member may enter an appearance through an attorney if the member so desires; (v) that the  
19 Court will exclude from the Settlement Class any member who requests exclusion; (vi) the time and  
20 manner for requesting exclusion; and (vii) the binding effect of a class judgment on members under  
21 Rule 23(c)(3).

22 7. As set forth in the Agreement at Section III.C.2, the Settlement Administration  
23 Expenses, which includes but is not limited to the costs and expenses incurred providing notice to  
24 the Settlement Class, shall be deducted from Trader Joe's total financial commitment of  
25 \$3,375,000.00 before any refunds are awarded to Settlement Class Members.



1 Francisco, CA 94102. At the Final Approval Hearing, the Court will consider: (i) whether the  
2 Settlement Class satisfies the applicable requirements of Rule 23 and should be finally certified for  
3 settlement purposes only; (ii) whether the Agreement should be approved as fair, reasonable, and  
4 adequate for the Settlement Class; (iii) whether the Court shall issue the Final Judgment and Order  
5 Approving Settlement approving the terms of the Agreement and dismissing the Action with  
6 prejudice; (iv) whether Co-Lead Counsel's application for Attorneys' Fees and Expenses and  
7 incentive awards for the named Plaintiffs should be granted; (v) the validity of any Requests for  
8 Exclusion and whether to exclude from the Settlement Class those persons who validly and timely  
9 opt out; and (vi) the objections, if any, regarding this Agreement.

#### 10 Objections

11 12. Any Settlement Class Member who complies with the requirements of this paragraph  
12 may object to any aspect of the proposed settlement either on his or her own or through an attorney  
13 hired at his or her expense. Any Settlement Class Member who intends to object to the proposed  
14 settlement must do so no later than 75 days after the Notice Date ("Objection Date"). In order to  
15 object, the Settlement Class Member must file with the Court, at the address specified in the Class  
16 Notice, documentation that: (i) provides the name, address, telephone number, and e-mail address of  
17 the objecting Settlement Class Member and, if represented by counsel, the name, address, telephone  
18 number, and e-mail address of his/her counsel; (ii) specifically identify all objections, as well as the  
19 specific reasons, if any, for each objection, including any legal support the Settlement Class Member  
20 wishes to bring to the Court's attention and any evidence the Settlement Class Member wishes to  
21 introduce in support of his or her objection; (iii) provides Proof of Purchase of a Product or a  
22 statement, sworn to under penalty of perjury pursuant to 28 U.S.C. § 1746, attesting to the fact that  
23 he or she purchased one or more of the Products during the Settlement Class Period; and (iv) notice  
24 if the Settlement Class Member intends to appear at the Final Approval Hearing, either with or  
25 without counsel.

26 13. Any Settlement Class Member may also appear at the Final Approval Hearing either  
27 in person or through counsel retained at the Settlement Class Member's expense. A Settlement  
28 Class Member who wishes to appear at the Final Approval Hearing, in person or through counsel,

1 may provide the Court with written notice of intent to appear in accordance with the preceding  
2 paragraph.

3 Exclusions

4 14. Any Settlement Class Member may request to be excluded (or “opt out”) from the  
5 Settlement Class. A Settlement Class Member who wishes to opt out of the Settlement Class must  
6 do so no later than 75 days after the Notice Date (“Opt Out Date”). In order to opt out, a Settlement  
7 Class Member must complete and mail to the Class Action Settlement Administrator a Request For  
8 Exclusion that is post-marked no later than the Opt Out Date. The Request for Exclusion must: (i)  
9 be personally signed by the Settlement Class Member requesting exclusion; (ii) request exclusion  
10 from the Settlement Class; and (iii) include a statement that the requesting person is a member of the  
11 Settlement Class. So-called “mass” or “class” opt outs shall not be allowed.

12 15. Except for those Settlement Class Members who timely and properly file a Request  
13 for Exclusion, all other Settlement Class Members will be deemed to be Settlement Class Members  
14 for all purposes under the Agreement, and upon the Effective Date, will be bound by its terms,  
15 regardless of whether they file a Claim or receive any relief, file an objection, or has pending, or  
16 subsequently initiates, any litigation, arbitration or any other proceeding against any of the Released  
17 Parties relating to the Released Claims.

18 16. Any Settlement Class Member who properly requests to be excluded from the  
19 Settlement Class shall not: (i) be bound by any orders or judgments entered in the action relating to  
20 the Settlement; (ii) be entitled to relief under, or be affected by, the Agreement; (iii) gain any rights  
21 by virtue of the Agreement; or (iv) be entitled to object to any aspect of the agreement.

22 17. The names of all Settlement Class Members who properly requested exclusion shall  
23 be included or attached as an exhibit to the Final Order and Judgment.

24 Termination

25 18. If the Agreement is not approved by the Court, or for any reason the Parties fail to  
26 obtain a Final Order and Judgment as contemplated by the Stipulation, or the settlement is  
27 terminated pursuant to its terms or for any reason:

- 28 a. All orders and findings entered in connection with the settlement shall become null  
and void and have no force and effect whatsoever, shall not be used or referred to for

1 any purposes whatsoever, and shall not be admissible or discoverable in this or any  
2 other proceeding;

- 3 b. The conditional certification of the Settlement Class pursuant to this Order shall be  
4 vacated automatically, the Action shall proceed as though the Settlement Class had  
5 never been certified pursuant to this settlement and such findings had never been  
6 made, and the Action shall return to the procedural *status quo* before entry of this  
7 Order;
- 8 c. Nothing contained in this Order is, or may be construed as, any admission or  
9 concession by or against Trader Joe's or Plaintiffs on any point of fact or law,  
10 including, but not limited to, factual or legal matters relating to any effort to certify  
11 this action as a class action or relating to Trader Joe's liability with respect to any  
12 claims that were or could have been asserted in this Action;
- 13 d. Nothing in this Order or pertaining to the settlement shall be used as evidence in any  
14 further proceeding in this Action or any other action, including, but not limited to,  
15 motions or proceedings seeking treatment of this action as a class action; and
- 16 e. All of the Court's prior orders having nothing whatsoever to do with class  
17 certification or settlement approval shall, subject to this Preliminary Approval Order,  
18 remain in force and effect.

19 Deadlines

20 19. In accordance with the Agreement and the exhibits attached thereto, the Court sets the  
21 following deadlines subject to Section V.1.a of the Agreement:

- 22 a. The Long Form Notice and Claim Forms shall be mailed and posted on the internet  
23 within thirty (30) days following entry of this Order ("Notice Date").
- 24 b. No later than thirty (30) days after entry of this Order, the Short Form Notice will be  
25 published twice over a period of two weeks in *USA Today*.
- 26 c. No later than thirty (30) days after entry of this Order, the Short Form Notice will be  
27 distributed once by *PR Newswire* on a nationwide distribution.
- 28 d. In accordance with Sections V.3 and V.4 of the Agreement, Trader Joe's and the  
29 Class Action Settlement Administrator shall file with the Court proof of compliance  
30 with the notice plan no later than seven (7) business days prior to the Final Approval  
31 Hearing.
- 32 e. All papers in support of Co-Lead Counsel's application for an award of Attorneys'  
33 Fees and Expenses and incentive awards shall be filed no later than forty five (45)  
34 days after the Notice Date.
- 35 f. Any requests for exclusion from the Settlement Class must be postmarked no later  
36 than seventy five (75) days after the Notice Date.
- 37 g. Any objections to the Agreement must be filed with the Court no later than seventy  
38 five (75) days after the Notice Date.
- 39 h. All completed Claim Forms must be postmarked or submitted online no later than  
40 ninety (90) days after the Notice Date.

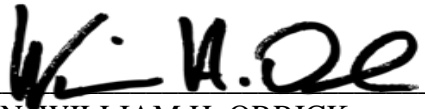


- 1           i. All papers in support of final approval of the settlement shall be filed no later than  
2           ninety (90) days after the Notice Date.  
3           j. A Final Approval Hearing shall be scheduled within approximately one hundred  
4           twenty (120) days following the Notice Date, or as the Court's schedule permits.

5           21. If any deadline set forth in this Order falls on a Saturday, Sunday or federal holiday,  
6 then such deadline shall extend to the next Court business day.

7           22. The Court reserves the right to adjust the date of the Final Approval Hearing and  
8 related deadlines. In that event, the revised hearing date and/or deadlines shall be posted on the  
9 settlement website referred to in the Class Notice, and the parties shall not be required to re-send or  
10 re-publish Class Notice.

11 Dated: February 6, 2014.

12  
13 

14 HON. WILLIAM H. ORRICK  
15 UNITED STATES DISTRICT JUDGE  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28