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Interim Class Counsel

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

IN RE QUAKER OATS LABELING LITIGATION

CASE NO.: 5:10-CV-00502-RS

NOTICE OF JOINT MOTION AND JOINT MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF

Judge: Honorable Richard Seeborg
Hearing Date: June 26, 2014
Time: 1:30 p.m.
Place: Courtroom 3, 17th Floor
Action Filed: February 3, 2010

NOTICE OF JOINT MOTION FOR FINAL APPROVAL OF CLASS SETTLEMENT

PLEASE TAKE NOTICE that on June 26, 2014, at 1:30 p.m., in Courtroom 3, 17th Floor, of this Court, located at 450 Golden Gate Avenue, San Francisco, CA 94102, Plaintiffs Victor Guttmann, Sonya Yrene, and Rebecca Yumul (collectively, "Plaintiffs") and Defendant The Quaker Oats Company ("Quaker") will and hereby do move this Court for an Order granting the following relief:

1. Approving the proposed settlement as fair, reasonable, and adequate pursuant to Federal Rule of Civil Procedure 23;

2. Certifying the Class under Rule 23(b)(2) 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 timely submitted 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; and

7. Issuing any related orders as deemed appropriate by the Court.

Plaintiffs and Quaker jointly ask 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 F and G to the Settlement Agreement. *See* D.E. 168-1.

The motion is made pursuant to Rule 23(b)(2) and is based on this notice; the accompanying Memorandum of Points and Authorities; the concurrently filed Declaration; the argument of counsel and all records on file in this matter; and such other matters as the Court may deem appropriate.

Dated: June 12, 2014

/s/ Gregory S. Weston_____
Gregory S. Weston
THE WESTON FIRM
Attorney for Plaintiffs and the Settlement Class

Dated: June 12, 2014

/s/ Daniel W. Nelson_____
Daniel W. Nelson
GIBSON, DUNN & CRUTCHER LLP
Attorney for Defendant The Quaker Oats Company

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page

CASES

STATUTES

OTHER AUTHORITIES

RULES

REGULATIONS

MEMORANDUM OF POINTS AND AUTHORITIES

Plaintiffs Victor Guttmann, Sonya Yrene, and Rebecca Yumul (collectively, "Plaintiffs") and Defendant The Quaker Oats Company ("Quaker") respectfully submit this Memorandum of Points and Authorities in Support of their Joint Motion for Final Approval of the Class Action Settlement in this Litigation.

I. INTRODUCTION

On February 12, 2014, this Court entered an Order preliminarily approving a Class Action Settlement Agreement ("Settlement") between Plaintiffs, on behalf of the Class, and Quaker. *See* D.E. 180. The Parties reached the Settlement after more than three years of litigation and protracted negotiation over the course of several months, including with the assistance of The Honorable Leo S. Papas (Ret.) as a mediator. The settlement is memorialized in the Class Action Settlement Agreement ("Settlement Agreement") filed with this Court on December 23, 2013, and resolves all claims in the Litigation.[1]

As Plaintiffs explained to this Court in their motion for preliminary approval, the Settlement provides meaningful injunctive relief to the Class. Although Quaker continues to deny Plaintiffs' allegations, it has agreed under the Settlement Agreement to remove partially hydrogenated oil ("PHO") ingredients (*i.e.*, the source of *trans* fat in the Products) by December 31, 2015 from the Products that contain them. *See* D.E. 168, at 4. In addition, Quaker agreed not to introduce PHOs into those Products, or any other Products at issue in the Litigation, for a period of ten years. *See id.* Quaker further agreed that, if PHOs remain in any of the Products on or after December 31, 2014, it will cease making the statement "contains a dietarily insignificant amount of *trans* fat" on the label of any Product containing 0.2 grams or more of *trans* fat per serving. *See id*.

[1] Unless otherwise noted, capitalized terms used in this Memorandum of Points and Authorities have the same meaning as in the Settlement Agreement.

The parties' settlement should now receive the Court's final approval because it is demonstrably "fair, reasonable, and adequate" under Federal Rule of Civil Procedure 23(e)(2). The Settlement provides meaningful relief for the Class in the face of significant risks of continued litigation. Class Counsel, who are highly skilled and experienced in consumer and complex litigation, vigorously litigated the claims before agreeing to the Settlement. As a result, Plaintiffs and Class Counsel participated in the settlement negotiations from a well-informed position that resulted in substantial injunctive relief to the Class and a significant benefit to the public at large. Indeed, Class Members have responded positively to the relief that Class Counsel negotiated on their behalf: no members have opted out of the Class, and only two Class Members have filed objections with this Court. The Settlement has the full support of each of the three Class Representatives.

For the reasons below, and those stated in Plaintiffs' Motion for Preliminary Approval of the Settlement, *see* D.E. 168, at 9-12, Plaintiffs ask that the Court certify the Class for Settlement purposes under Rule 23(b)(2), find that the Settlement is fair, reasonable, and adequate under Rule 23(e)(2), and thus grant final approval of the Settlement.

II. THE LITIGATION AND SETTLEMENT NEGOTIATIONS

The operative First Amended Consolidated Complaint alleges that the labels of certain products manufactured by Quaker are misleading because they imply that the Products are healthy, even though they contain or contained during the class period *trans*-isomer fatty acids—commonly known as *trans* fat—from PHOs. Since 2006, the FDA has required food labels to disclose nutrient information for *trans* fat. *See Food Labeling: Trans Fatty Acids in Nutrition Labeling, Nutrient Content Claims, and Health Claims*, 68 Fed. Reg. 41,434 (July 11, 2003; effective Jan. 1, 2006). The relevant FDA regulation requires the *trans* fat content to be disclosed on the Nutrition Facts panel of packaged food and to be "expressed as grams per serving to the nearest 0.5 (1/2)-gram increment below 5 grams and to the nearest gram increment above 5 grams." 21 C.F.R. § 101.9(c)(2)(ii). It further provides that, "[i]f the serving contains

less than 0.5 gram, the content, when declared, shall be expressed as zero." *Id.* For purposes of the Nutrition Facts panel, the FDA defines as an "insignificant amount" any nutrient present in an "amount that allows a declaration of zero in nutrition." *Id.* § 101.9(f)(1). Quaker asserts that the Products at issue here have, at all relevant times, contained either no *trans* fat or less than 0.5 grams per serving.

The First Amended Consolidated Complaint alleges that Plaintiffs are repeat purchasers of the Products, and assert that they read and relied on various statements made on Quaker's packaging that they claim were rendered misleading by the presence of *trans* fat from PHOs. *See* D.E. 102 ¶ 4, 116 & App'x. A. Based on these purportedly false and misleading statements, Plaintiffs assert causes of action for alleged violations of California's consumer protection laws—in particular, the Consumers Legal Remedies Act (Cal. Civ. Code § 1750 *et seq*.), the False Advertising Law (Cal. Bus. & Prof. Code § 17500 *et seq*.), and the Unfair Competition Law (*id.* § 17200 *et seq*.). Quaker denies any wrongdoing.

On March 28, 2012, this Court granted in part and denied in part Quaker's motion to dismiss the First Amended Consolidated Complaint. *See* D.E. 131.[2] The Court held that Plaintiffs' challenges to several statements on the Products' packaging were preempted by the Federal Food, Drug, and Cosmetic Act, but permitted Plaintiffs to pursue their claims as to other statements and images. Since then, the Parties have engaged in substantial factual discovery; they each made initial document productions and participated in an extensive meet-and-confer process over the scope and contents of the remaining discovery. In addition, Class Counsel has conducted research outside of the discovery process to effectively negotiate the Settlement on behalf of the Class, including through their work in other cases involving *trans* fat and challenges to product labeling.

[2] The Court had previously granted in part and denied in part Quaker's motion for judgment on the pleadings, concluding that several of the claims asserted in Plaintiffs' prior complaint were preempted by federal law. *See* D.E. 34.

In addition to vigorously pursuing litigation in this matter, the Parties also engaged in protracted arms'-length settlement negotiations over the course of approximately six months. These negotiations included a lengthy mediation session with The Honorable Leo S. Papas (Ret.), who served as a magistrate judge for the Southern District of California for 18 years before his retirement. Ultimately, the Parties reached a Settlement that would avoid the need for further litigation by providing substantial injunctive relief to the Class.

Plaintiffs filed a Motion for Preliminary Settlement Approval on December 23, 2013. *See* D.E. 168. On February 6, 2014, the Court held a hearing on Plaintiffs' motion, *see* D.E. 178, and granted preliminary approval of the Settlement on February 12, 2014, *see* D.E. 180. The Fairness Hearing for the Settlement is scheduled for June 26, 2014.

III. TERMS OF THE PROPOSED SETTLEMENT

The terms of the Settlement are as follows:

A. The Proposed Settlement Class

The Class includes all persons and entities who purchased one or more of the Products in the United States during the period from February 3, 2006 through May 27, 2014. Excluded from the class are (a) persons or entities who purchased the Products for the purpose of resale or distribution; (b) persons who are employees, directors, officers, or agents of Quaker or its parent or subsidiary companies; (c) government entities; (d) persons who timely and properly excluded themselves from the Class, as provided in the Settlement Agreement; and (e) any judicial officer hearing this Litigation, as well as their immediate family members and employees.

B. Injunctive Relief

Quaker continues to deny Plaintiffs' allegations that the Products contain or contained false or misleading labeling. As a compromise, however, and to resolve this matter expeditiously, Quaker has agreed to take significant measures over the next several years that will provide substantial injunctive relief to the Class.

First, Quaker has agreed to remove PHOs by December 31, 2015 from the Oatmeal to Go and Instant Quaker Oatmeal Products that currently contain PHOs, and not to reintroduce PHOs into those products for a period of ten years. *See* D.E. 168-1, at 14. The estimated cost of reformulating these products is approximately $1.4 million. *See* D.E. 168-2, at 2.

Second, with respect to the remaining Products at issue in the Litigation, Quaker has agreed not to introduce PHOs for a period of ten years into Quaker Chewy Bars (which do not currently contain PHOs), as well as the Instant Quaker Oatmeal Products that do not currently contain PHOs. *See* D.E. 168-1, at 15.

Third, Quaker has agreed that, unless it is in early compliance with the provision requiring removal of PHOs from the Products by December 31, 2014, it will cease making the statement "contains a dietarily insignificant amount of *trans* fat" on the label of any Product containing 0.2 grams or more of *trans* fat per serving. *See* D.E. 168-1, at 15.

C. Release, Entry of Judgment, and Continuing Jurisdiction

If the Court grants final approval, every Class Member who has not filed a Request for Exclusion from the Settlement Class will be deemed to have released and forever discharged Quaker and the other Released Parties, as defined in the Settlement Agreement, from any and all Released Claims as set forth in Section 7 of the Settlement Agreement. *See* D.E. 168-1, at 22. The Court will retain jurisdiction with respect to the implementation and enforcement of the terms of the Settlement, and all parties agree to submit to the jurisdiction of the Court for purposes of implementing and enforcing the settlement. *See id.* at 24.

IV. DISSEMINATION OF NOTICE TO THE CLASS

The Parties developed a notice program with the assistance of Classaura Class Action Administration ("Classaura"), a firm that specializes in the development, design, and implementation of class-action notice plans. The program was executed in accordance with its design and the terms approved by the Court. *See* D.E. 180, at 4. To date, the costs of providing

notice to Class Members has exceeded $86,000. *See* Decl. of Gajan Retnasaba ("Retnasaba Decl.") at ¶11 (June 9, 2014) (attached as Exhibit A).

In consultation and collaboration with the parties, Classaura has taken thorough steps to provide the Court-ordered Notice to Class Members. These notice procedures are consistent with class-action notice plans that have consistently been approved and implemented in other litigation, *see* D.E. 168, at 12 (collecting cases), and this Court has accordingly found that they "satisf[y] due process," are the "best notice practicable under the circumstances," and "shall constitute due and sufficient notice," D.E. 180, at 4.

A. Publication Notice

The Court-approved notice was published in *USA Today* on both April 3, 2014 and April 7, 2014. *See* Retnasaba Decl. ¶2. Notice was also published in the May edition of *Prevention* magazine, which was distributed to readers on or about April 24, 2014. *Id.* at ¶3. The published notice used the same language that this Court approved as the Short Form Notice, and was designed to provide Class Members with plain-language information regarding the Settlement and to inform them about their rights. 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. For additional information, Class Members were directed to the Settlement Website or, in the alternative, to a toll-free number that they could call for information. *See* D.E. 168-1, at 54.

Complementing the published notices is the Long Form Class Notice. The Long Form 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. *See* D.E. 168-1, at 39. The Long Form Class Notice is available on the Settlement Website identified in the published notices and by request to the Class Action Settlement Administrator. *Id.* Classaura provided 54 copies of the Long Form Class Notice at the request of Class Members. *See* Retnasaba Decl. ¶8.

B. Settlement Website

On February 17, 2014, the Settlement Web site (www.QuakerLawsuit.com) was launched. *See* Retnasaba Decl. ¶5. The Web site's address appeared on all of the notices, as well as on Class Counsel's firm website. The Settlement Web site provides detailed information about the Settlement, as well as a copy of the published notice, Long Form Class Notice, summary of important dates, a copy of the Settlement Agreement with Exhibits, the Complaint, Plaintiffs' Motion for Preliminary Approval and accompanying declarations, the Preliminary Approval Order, and the Motion for Attorney Fees, Costs, and Incentive Awards. Class Members are advised of their legal rights, including, for example, how to opt-out or object. *See id.* at ¶5. The Web site had been viewed 3,192 times since its launch. *See id.*

C. Other Forms of Notice

In addition, by February 17, 2014, a toll-free number was established, in both English and Spanish, allowing Class Members to call and request that a Notice be mailed to them or listen to frequently asked questions. *See* Retnasaba Decl. ¶4. To date, there have been 401 calls to the toll-free number. *See id.*

The Class Action Fairness Act of 2005 ("CAFA") additionally requires class-action defendants to notify federal and state officials of any proposed settlement. 28 U.S.C. § 1715(b). On January 2, 2014, pursuant to CAFA, Quaker sent a Notice of Class Settlement to the Attorney General of the United States and to the attorneys general of every state. *See* D.E. 198. The Notice attached copies of the First Amended Consolidated Complaint, the Settlement Agreement and exhibits, and Plaintiffs' Motion for Preliminary Approval and exhibits. Neither General Holder nor any of the states' attorneys general has objected to the settlement.

V. ARGUMENT

"[T]here is a strong judicial policy that favors settlements, particularly where complex class action litigation is concerned." *In re Syncor ERISA Litig.*, 516 F.3d 1095, 1101 (9th Cir. 2008). As the Ninth Circuit has repeatedly emphasized, "voluntary conciliation and settlement

are the preferred means of dispute resolution," *Officers for Justice v. Civil Serv. Comm'n*, 688 F.2d 615, 625 (9th Cir. 1982), and this "overriding public interest in settling and quieting litigation" is especially pronounced in class actions, "which frequently present serious problems of management and expense," *Van Bronkhorst v. Safeco Corp.*, 529 F.2d 943, 950 (9th Cir. 1976).

Under Federal Rule of Civil Procedure 23(e)(2), a district court may approve a class settlement that "would bind class members" if, following a hearing, the court finds that the settlement is "fair, reasonable and adequate." *See*, *e.g.*, *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998) (internal quotation marks omitted). This is necessarily a "tailored" inquiry:

> [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.

Officers for Justice, 688 F.2d at 625; *see also*, *e.g.*, *Rodriguez v. West Publ'g Corp.*, 563 F.3d 948, 965 (9th Cir. 2009) (same).

Significantly, a proposed settlement "is not to be judged against a hypothetical or speculative measure of what might have been achieved by the negotiators." *Officers for Justice*, 688 F.2d at 625. Instead, a settlement is fair, reasonable, and adequate when "the interests of the class are better served by the settlement than by further litigation." *Manual for Complex Litigation (Fourth)* § 21.6, at 309 (2012); *see also*, *e.g.*, *Officers for Justice*, 688 F.2d at 625 ("[I]t is the very uncertainty of outcome in litigation and avoidance of wasteful and expensive litigation that induce consensual settlements."). In addition, "[i]t is the settlement taken as a whole, rather than the individual component parts, that must be examined for overall fairness." *Hanlon*, 150 F.3d at 1026.

The Ninth Circuit has identified a list of non-exclusive factors that a district court should consider in deciding whether to grant final approval, which may include some or all of the following:

> (1) the strength of plaintiffs' 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 offered in settlement; (5) the extent of discovery completed and the stage of the proceedings; (6) the experience and views of counsel; (7) the presence of a governmental participant; and (8) the reaction of the class members to the proposed settlement.

Churchill Vill., L.L.C. v. Gen. Elec., 361 F.3d 566, 575 (9th Cir. 2004); *see also*, *e.g.*, *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 946 (9th Cir. 2011) (same).

In addition to considering these so-called "*Churchill* factors," the district court must also satisfy itself that "the settlement is 'no[t] the product of collusion among the negotiating parties.'" *Bluetooth*, 654 F.3d at 947 (quoting *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 458 (9th Cir. 2000)). A settlement is "presumpt[ively]" fair where it is negotiated at arm's length by experienced counsel after significant discovery, mediation, and months of protracted settlement discussions. *See In re Heritage Bond Litig.*, No. 02-ML-1475 ST, *et al.*, 2005 WL 1594403, at *2 (C.D. Cal. June 10, 2005). This presumption is fully warranted here because the Settlement is the product of arm's length negotiations conducted by capable counsel who are well-experienced in class-action litigation and mediated with the assistance of The Honorable Leo S. Papas (Ret.).

A. The Settlement Is Fair, Reasonable, and Adequate.

Each of the factors identified by the Ninth Circuit as bearing on the fairness, reasonableness, and adequacy of a proposed settlement agreement strongly supports approval of the agreement at issue here.

1. The Parties Understood the Strengths and Weaknesses of their Positions When They Negotiated the Settlement.

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 v. McKee Foods Corp., 716 F. Supp. 2d 848, 852 (N.D. Cal. 2010) (quoting *In re Warner Commuc'ns Sec. Litig.*, 618 F. Supp. 735, 745 (S.D.N.Y. 1985)); *see also*, *e.g.*, *Ellis v. Naval Air Rework Facility*, 87 F.R.D. 15, 18 (N.D. Cal. 1980). The parties here were "well positioned" at the time of their negotiations to "assess the strength of this case and the comparative benefits" of the Settlement. *Browning v. Yahoo! Inc.*, No. C04-1463, 2007 WL 4105971, at *12 (N.D. Cal. Nov. 16, 2007).

The proposed Settlement was reached following extensive investigation, discovery, and motion practice in the Litigation. Although Plaintiffs and Class Counsel maintain that their claims are valid and assert that they would prevail at trial, they acknowledge the significant challenges that they would face at both the class-certification stage and on the merits. The legal and factual positions in the case have been extensively briefed in the Parties' submissions in connection with Quaker's motion to dismiss, and the Parties were actively engaged in document production when the Settlement was reached. As such, the action had reached a stage where the Parties had—and negotiated with—a "clear view of the strengths and weaknesses of their case[]." *Chun-Hoon*, 716 F. Supp. 2d at 852 (internal quotation marks omitted).

2. The Risk, Expense, Complexity, and Likely Duration of Further Litigation Support the Settlement.

The expense, complexity, and duration of litigation are significant factors considered in evaluating the reasonableness of a settlement. *Churchill Vill.*, 361 F.3d at 576. Courts evaluate the strength of a plaintiff's case to "judge the fairness of a proposed compromise by weighing the plaintiff's likelihood of success on the merits against the amount and form of the relief offered in the settlement." *Carson v. Am. Brands, Inc.*, 450 U.S. 79, 88 n.14 (1981). The proposed Settlement provides substantial injunctive relief that will remain in place for years and that specifically addresses the claims asserted by Plaintiffs. Settlement on these terms is clearly warranted after comparing the uncertainties of future litigation given the risks detailed below.

The parties have already invested more than three years in aggressive, costly, and time-consuming pretrial litigation. The discovery obtained thus far makes clear that Plaintiffs face substantial challenges at each remaining stage of litigation, including class certification, summary judgment, trial, and appeal. At each stage, moreover, Plaintiffs risk receiving no relief at all and losing the opportunity to obtain the injunctive relief provided by the Settlement. The Settlement eliminates these costs and risks, while securing a favorable outcome for the Class.

Approval of a settlement is proper where, as here, "the settlement terms compare favorably to the uncertainties associated with continued litigation regarding the contested issues in this case," including where the settlement "provides Class Members with a meaningful business resolution regarding contested issues." *Nat'l Rural Telecomms. Coop. v. DirecTV, Inc.*, 221 F.R.D. 523, 526 (C.D. Cal. 2004). Absent the settlement, Quaker would present defenses that could pose a serious threat to Plaintiff's claims, as well as create uncertainty as to the appropriateness of class certification. Among other arguments at Quaker's disposal, Quaker's summary judgment briefing would raise serious questions of liability, including whether a reasonable purchaser would have been deceived by the challenged statements, and any damages calculation would entail so-called battles of the experts, thus increasing the cost and uncertainty to Plaintiffs. The potential arguments available to Quaker indicate that Plaintiffs' ability to prove liability and damages is unclear, at best, and favors a finding that the settlement is fair. *See In re Portal Software, Inc. Sec. Litig.*, No. C-03-5138 VRW, 2007 WL 4171201, at *3 (N.D. Cal. Nov. 26, 2007) (approving a settlement because, among other things, "plaintiffs' remaining claims are tenuous. Plaintiffs assert that establishing liability and damages at trial would be difficult because of the uncertainties associated with proving its claims, which are 'exacerbated by the unpredictability of a lengthy and complex jury trial'").

Moreover, Quaker would likely appeal any outcome in Plaintiffs' favor. Even in the best case, therefore, it could take many years for Class Members to get *any* relief absent the Settlement. There is a significant advantage of receiving a tangible benefit now as opposed to a

speculative potential benefit later. *See Officers for Justice*, 688 F.2d at 625; *Marshall v. Holiday Magic, Inc.*, 550 F.2d 1173, 1178 (9th Cir. 1977). Simply put, the risks and potential delay of further litigation outweigh the immediate, concrete relief provided under the proposed settlement agreement. *See*, *e.g.*, *Greko v. Diesel U.S.A., Inc.*, No. 10-cv-02576NC, 2013 WL 1789602, at *5 (N.D. Cal. Apr. 26, 2013) (approving a final settlement and noting that, "even with a strong case, further litigation would be time-consuming and expensive"); *see also In re Heritage Bond Litig.*, 2005 WL 1594403, at *7 ("[W]hile Plaintiffs are confident of the strength of their case, it is imprudent to presume ultimate success at trial and thereafter.").

3. The Potential Difficulty of Maintaining Class Action Status Throughout the Litigation Favors The Settlement.[3]

The Settlement provides Class Members with significant benefits without the risk and delay of continued litigation, trial, and appeal. In negotiating the Settlement, Plaintiffs took into account the uncertainty of litigation and believe that, in light of the risks, the Settlement is fair, reasonable, and adequate. In particular, if Plaintiffs were unable to obtain and preserve class certification, the case would effectively be over, and the Class would receive nothing. Continuing to pursue this litigation would raise serious risks for Plaintiffs on this score.

If the case had not settled, Quaker would vigorously dispute that certification of any class is appropriate in this case. Plaintiffs are aware of the significant barriers they would face in obtaining and maintaining class certification. These barriers would be particularly daunting if Plaintiffs were to seek certification of a damages class under Rule 23(b)(3), rather than the injunctive-relief certification sought by the Settlement Rule 23(b)(2). Rule 23(b)(3) permits certification of a damages class only when "questions of law or fact common to class members predominate over any questions affecting only individual members." Yet the claims that could

[3] This sub-section only is not joined by Plaintiffs, who believe they have a strong case for class certification. Plaintiffs nonetheless acknowledge that certain food labeling cases similar to this action have not been certified, and that recent decisions decertifying or denying certification of consumer class actions is an additional factor favoring approval of the Settlement.

be asserted by Class Members would raise innumerable individual questions. For example, Class Members may have purchased the Products for any number of reasons and are unlikely to have seen the same packaging (because Quaker used vastly different Product packaging over the course of the Class Period); in addition, the Class Members did not pay a uniform price for the Products, which was instead set by individual retailers across the country. *See*, *e.g.*, *Comcast Corp. v. Behrend*, 133 S. Ct. 1426, 1432 (2013) (rejecting Rule 23(b)(3) certification given differences in price paid by cable subscribers across the class region).

For these and other reasons, cases involving similar factual allegations have consistently rejected damages classes under Rule 23(b)(3). *See In re POM Wonderful LLC*, No. ML 10-02199, 2014 WL 1225184, at *5 (C.D. Cal. Mar. 25, 2014) (predominance requirement not satisfied because plaintiffs' damages expert failed to "answer the critical question why that price difference existed, or to what extent it was a result of Pom's actions"); *Astiana v. Ben & Jerry's Homemade, Inc.*, No. C 10-4387 PJH, 2014 WL 60097 (N.D. Cal. Jan. 7, 2014) (denying class certification in part because an individualized award of restitution would depend on how many products each class member purchased and the defendant did not set the retail price); *Red v. Kraft Foods, Inc.*, No. CV 10-1028, 2012 WL 8019257, at *11 (C.D. Cal. Apr. 12, 2012) (same); *Hernandez v. Chipotle Mexican Grill, Inc.*, No. CV 12-5543, 2013 WL 6332002 (C.D. Cal. Dec. 2, 2013) (denying class certification in part because there was no class-wide method for calculating damages that depend on the amount of purchases and date of those purchases); *Weiner v. Snapple Beverage Corp.*, 07 Civ. 8742, 2010 WL 3119452 (S.D.N.Y. Aug. 5, 2010) (denying Rule 23(b)(3) certification because individualized inquiries into causation, injury, and damages would predominate); *see also Ries v. AriZona Beverages USA LLC*, 287 F.R.D. 523 (N.D. Cal. 2012) (Seeborg, J.) (noting that "individualized awards of monetary restitution . . . would require individualized assessments of damages based on how many products the class member had bought"). Yet even if Plaintiffs were able to secure a favorable decision on a motion for class certification, the Court has the ability to decertify any certified class at any time,

and certification could be challenged on appeal under Rule 23(f) or following final judgment. *See Rodriguez*, 563 F.3d at 966.

4. The Substantial Injunctive Relief Offered in the Settlement Further Supports Final Approval.

The Settlement provides substantial injunctive relief for the Class: Quaker has committed to eliminating all PHOs from the relevant Products by December 31, 2015, and not to introduce PHOs into these Products, or the other Products at issue in the litigation, for ten years. This undertaking confers a substantial benefit on the class and accomplishes the principal goals of the litigation. Similar settlements providing injunctive relief for Class members, and monetary amounts only for attorney's fees, costs, and incentive payments to the named Plaintiffs, have been approved by courts in this Circuit. *See Lyons v. CoxCom, Inc.*, No. 08-cv-2047-H-CAB (S.D. Cal. Aug. 23, 2010) (granting final approval of Rule 23(b)(2) settlement where class members did not receive a direct monetary benefit but were required to release monetary claims); *see also Rosen v. Unilever United States, Inc.*, No. C 09-02563, 2011 U.S. Dist. LEXIS 157519 (N.D. Cal. June 21, 2011) (granting final approval to class settlement requiring removal of *trans* fat from all Unilever margarines without payments to the class).

This injunctive relief is particularly valuable because, whether or not the Settlement is ultimately approved, the class may not recover any damages. As discussed above, Plaintiffs recognize that they face a number of barriers to success should they seek certification of a damages class pursuant to Rule 23(b)(3). And even if a damages class were certified, the value of each claim would be exceedingly small both because of the generally low prices of the products, typically less than $3, and because of the small value of any alleged "premium" that a given class member allegedly paid as a result of the handful of challenged labeling statements that appeared episodically on some of the products. Given the likely valuation of the claims remaining in this litigation, and the relatively large size of the class, any payment per person would be *de minimis*, and a large part of the common fund would likely be wasted locating and

sending low-value checks to Class Members, with other amounts left unclaimed. Class Members benefit from receiving guaranteed relief now, rather than only the speculative possibility that, after years of litigation, they might receive a small check or nothing at all.

Finally, courts have acknowledged the substantial benefit that injunctive relief provides to class members and the public at large. *See*, *e.g.*, *In re Currency Conversion Fee Antitrust Litig.*, 263 F.R.D. 110, 124 (S.D.N.Y. 2009) (court held that the injunctive relief was among the factors that "weigh[ed] strongly in favor of approval."). In addition to benefitting the Class Members, the injunctive relief provided in this Settlement confers a significant benefit to the public at large.

5. The Experience and Views of Counsel Favor Approval.

The experience and views of counsel also support approving the proposed Settlement. The fact that Class Counsel have determined, in the exercise of their duties to the Class, that this settlement is fair, reasonable, and adequate weighs in favor of final approval. *See*, *e.g., Pierce v. Rosetta Stone, Ltd.*, No. 11-01283, 2013 WL 5402120, at *5 (N.D. Cal. Sept. 26, 2013) ("Given the collective experience of the attorneys involved in this litigation, the Court credits counsels' view that the settlement is worthy of approval."). The basis for relying on Class Counsel's views is that "[p]arties represented by competent counsel are better positioned than courts to produce a settlement that fairly reflects each party's expected outcome in litigation." *In re Pac. Enters. Sec. Litig.*, 47 F.3d 373, 378 (9th Cir. 1995). Class Counsel believes that this is a strong Settlement that is fair and reasonable in light of the significant relief achieved by the Settlement.

6. The Absence of Governmental Participation Supports Approval.

Although CAFA does not create an affirmative duty for either state or federal officials to take any action in response to a class-action settlement, CAFA presumes that—once put on notice—state or federal officials will "raise any concerns that they may have during the normal course of the class action settlement procedures." *Garner v. State Farm Mut. Auto. Ins. Co.*, No. CV 08-1365, 2010 WL 1687832, at *14 (N.D. Cal. Apr. 22, 2010); *see also LaGarde v.*

Support.com, Inc., No. C 12-0609, 2013 WL 1283325, at *7 (N.D. Cal. Mar. 26, 2013) (same); *In re Netflix Privacy Litig.*, No. 5:11-cv-00379, at *14 (N.D. Cal. Mar. 18, 2013) (same). To date, no state or federal official has raised any objection to the settlement.

7. The Reaction of the Class Members to the Proposed Settlement Has Been Decidedly Favorable.

It is well established that "the 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." *Nat'l Rural Telecomms. Coop.*, 221 F.R.D. at 529 (collecting cases). Here, the response from Class members has been overwhelmingly positive.

There have been no requests for exclusion, and only two objections filed in accordance with this Court's order—one of which was filed by a former plaintiff in this case whose preferred counsel lost out on an earlier bid for control of the litigation. *See* D.E. 193, 195. This positive reaction to the Settlement indicates the Court should grant final approval, as the Court "'may appropriately infer that a class action settlement is fair, adequate, and reasonable when few class members object to it.'" *Garner*, 2010 WL 1687832, at *14. "'It is established that the 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.'" *In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1043 (N.D. Cal. 2008) (quoting *Nat'l Rural Telecomms. Coop.*, 221 F.R.D. at 528-29); *see also Dupler v. Costco Wholesale Corp.*, 705 F. Supp. 2d 231, 239 (E.D.N.Y. 2010) ("[A] small number of class members seeking exclusion or objecting indicates an overwhelming positive reaction of the class."). That presumption applies with full force here.

B. There Was No Collusion or Conflict of Interest.

When a settlement is reached before the class is certified, the settlement agreement must be scrutinized for signs of "collusion or other conflicts of interest." *Bluetooth*, 654 F.3d at 946; *see also Dennis v. Kellogg Co.*, 697 F.3d 858, 864 (9th Cir. 2012). Although such scrutiny is therefore required here, there is no evidence suggesting that the parties reached this Settlement as

a result of collusion, self-interest, or any conflict of interest. The Settlement provides significant injunctive relief to the class and resulted from an arms-length negotiation process with the benefit of the class members in mind. *See Bluetooth*, 654 F.3d at 948. Indeed, the Settlement was negotiated utilizing the guidance of an experienced, neutral mediator. *See id.* (holding that the use of a "neutral mediator" is "a factor weighing in favor of a finding of non-collusiveness").

In *Bluetooth*, the Ninth Circuit explained that the presence of particular "warning signs" for collusion requires district courts to more carefully scrutinize the proposed settlement; the ultimate issue, however, remains whether "the end product is a fair, adequate, and reasonable settlement agreement." *See id.* at 947-49. The terms of the Settlement provide real and meaningful injunctive relief to class members, and should be approved as fair, reasonable, and adequate. *See supra* at 17.

VI. THE PROPOSED SETTLEMENT CLASS SHOULD BE CERTIFIED FOR SETTLEMENT PURPOSES.

Based on the showing made by Plaintiffs in support of their Motion for Preliminary Approval, *see* D.E. 168, and as discussed more fully in this Court's Preliminary Approval Order, *see* D.E. 180, the Court should determine that the proposed settlement class meets the requirements laid out by Rule 23. *See Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 619-20 (1997); *Manual for Complex Litigation* § 21.632 .

Plaintiffs bear the burden of establishing that all four requirements of Rule 23(a)— numerosity, commonality, typicality, and adequacy of representation— are satisfied, as well as one requirement of Rule 23(b). *See Zinser v. Accufix Research Inst., Inc*., 253 F.3d 1180, 1186, *amended by* 273 F.3d 1266 (9th Cir. 2001). Plaintiffs seek certification under Rule 23(b)(2).

A. Numerosity Is Satisfied.

"The prerequisite of numerosity is discharged if 'the class is so large that joinder of all members is impracticable.'" *Hanlon*, 150 F.3d at 1019. In this case, the proposed Class consists of potentially hundreds of thousands of consumers who purchased Products during the Class

Period. This number far exceeds the point at which joinder of all members of the Class is obliviously impractical. *See id*.

B. The Settlement Class Satisfies the Commonality Requirement.

The commonality requirement asks whether "there are questions of fact and law which are common to the class." *Hanlon*, 150 F.3d at 1019 (internal quotation marks omitted). "Commonality requires the plaintiff to demonstrate that the class members have suffered the same injury." *Wal-Mart Stores, Inc. v. Dukes*, 131 S. Ct. 2541, 2551 (2011) (internal quotation omitted). This requirement is satisfied.

All of the class members purchased the Products at issue in the Litigation. While there were variations in the labels and packaging, the Class Members were all exposed to labels containing allegedly misleading statements during the Class Period. These facts are common to all Class Members. All of the Class Members allege violations of California's consumer-protections laws, and the question whether Quaker's labeling was misleading will resolve a central issue for all Class Members on a class-wide basis.

C. The Settlement Class Satisfies the Typicality Requirement.

Rule 23(a)(3) requires that the claims or defenses of the representative party be typical of the claims or defenses of the class. *Hanlon*, 150 F.3d at 1020. "[R]epresentative claims are 'typical' if they are reasonably co-extensive with those of absent class members; they need not be substantially identical." *Id.* The claims made by the named Plaintiffs are typical of the Class they seek to represent. The named Plaintiffs are all purchasers of Products manufactured by Quaker, as are all of the Class members, and both the named Plaintiffs and the absent members of the Class assert that the labeling of these Products was rendered misleading in exactly the same way—namely, because the products contained small amounts of *trans* fat.

D. The Settlement Class Satisfies the Adequacy of Representation Requirement.

Rule 23(a)(4) requires named plaintiffs to fairly and adequately protect the interests of the class, which includes retaining class counsel that are qualified, experienced, and generally

able to conduct the proposed litigation. As the Ninth Circuit has explained, "[r]esolution of two questions determines legal adequacy: (1) do the named plaintiffs and their counsel have any conflicts of interest with other class members, and (2) will the named plaintiffs and their counsel prosecute the action vigorously on behalf of the class?" *Hanlon*, 150 F.3d at 1020.

In its Order appointing The Weston Firm and Law Offices of Ronald A. Marron as interim class counsel over a competing law firm, the Court has already recognized that "[t]here is no question . . . the Weston/Marron counsel and Reese Richman have ample experience handling class actions and complete litigation. It is also clear that both have particular familiarity with suits involving issues of mislabeling and the food industry. Even more specifically, both firms seem to have developed a niche expertise in litigation centered on trans fat." D.E. 94, at 5.

Moreover, Plaintiffs do not have any interests antagonistic to the class. Plaintiffs are all average persons who purchased Quaker's Products for their own personal and household use in typical settings—*e.g.*, grocery stores and supermarkets. Their claims parallel those asserted by the absent Class Members. Accordingly, the requirements of Rule 23(a)(4) are satisfied.

E. The Settlement Class Meets the Requirement of Rule 23(b)(2).

Rule 23(b)(2) requires that (1) "the party opposing the class has acted or refused to act on grounds that apply generally to the class," and (2) "final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole." Fed. R. Civ. P. 23(b)(2). Both requirements are satisfied here. *First*, Quaker is alleged to have labeled its Products in a false and misleading manner that affected all Class Members in the same way. By definition, all Class Members purchased Products containing the allegedly misleading statements from third-party retailers. *Second*, the injunctive relief provided by the Settlement Agreement is appropriate for all Class Members. The Parties have agreed, after extensive negotiations, that forward-looking relief that will provide all Class Members—and the general public—with PHO-free versions of the Products for at least ten years is desirable and reasonable under the circumstances.

In addition, although Plaintiffs seek certification under Rule 23(b)(2), and thus no opt-out provision was necessary, Class Members were nonetheless afforded the opportunity to opt out of the Settlement. The Parties included this provision to ensure that any Class Member who is dissatisfied with the relief provided by the Settlement could pursue his own claims, and would not be precluded from doing so based on the release contained in the Settlement Agreement. In similar circumstances, the Ninth Circuit has concluded that absent class members' due process rights are adequately protected when they are afforded notice and the opportunity to opt out of a settlement that would release their damages claims. *See Brown v. Ticor Title Ins. Co.*, 982 F.2d 386, 392 (9th Cir. 1992) (noting that a Rule 23(b)(2) settlement may "bind an absent plaintiff concerning a claim for monetary damages" where the absent class members are provided notice and the opportunity to opt out). Consistent with the Ninth Circuit's guidance, the Parties here have included such provisions as a cornerstone of the Settlement to ensure that the absent Class Members' rights are protected.

This critical component of the Settlement distinguishes it from cases that have denied final approval under Rule 23(b)(2) where the proposed settlement did not provide absent class members with notice and an opportunity to opt-out, but nonetheless released all claims. *See*, *e.g.*, *Richardson v. L'Oreal USA, Inc.*, — F. Supp. 2d. —, Civ. Action No. 13-508, 2013 WL 5941486, at *9 (D.D.C. Nov. 6, 2013). Instead, the Settlement at issue here falls firmly in line with cases from this Circuit involving similar claims and releases, which have held class certification to be proper under Rule 23(b)(2). *See*, *e.g.*, D.E. 163, *Red v. Unilever United States, Inc.*, No. 10-cv-387 (N.D. Cal.) (approving Rule 23(b)(2) class settlement where defendant agreed to eliminate *trans* fat in products as injunctive relief, in exchange for release of all claims); D.E. 93, *Lyons v. CoxCom, Inc.*, No. 3:08-cv-2047 (S.D. Cal. Aug. 23, 2010) (certifying a Rule 23(b)(2) class where class members did not receive any direct monetary benefit but were required to release monetary liability and expenses).

VII. CONCLUSION

For the foregoing reasons, the Parties respectfully request that the Court approve the Parties' proposed Settlement as fair, reasonable, and adequate, certify the proposed Class under Rule 23(b)(2) for settlement purposes only, and enter final judgment in the case.

Respectfully submitted,

DATED: June 12, 2014

By: /s/ Daniel W. Nelson

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DATED: June 12, 2014

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FILER'S ATTESTATION

I, Daniel W. Nelson, am the ECF User whose ID and password are being used to file the above-captioned motion. In compliance with General Order 45, paragraph X.B., I hereby attest that Ronald A. Marron, Gregory Weston, and Jack Fitzgerald have concurred in this filing.

DATED: June 12, 2014

GIBSON, DUNN & CRUTCHER LLP

/s/ Daniel W. Nelson
Daniel W. Nelson

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Interim Class Counsel

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

IN RE QUAKER OATS LABELING LITIGATION

CASE NO. 5:10-cv-0502-RS
Pleading Type: Class Action
Action Filed: February 3, 2010

DECLARATION OF GAJAN RETNASABA IN SUPPORT OF JOINT MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT

Judge: The Honorable Richard Seeborg
Time: 1:30 p.m.
Location: Courtroom 3, 17th Floor

I, Gajan Retnasaba, declare as follows:

1. I am employed by Classaura LLC, located at 1718 Peachtree St #380, Atlanta, Georgia. Classaura was appointed as the Claims Administrator in this matter. I am over 21 years of age and am not a party to this action. I have personal knowledge of the facts set forth herein and, if called as a witness, could and would testify competently thereto.

NOTICE PUBLICATION

2. Two advertisements were placed in the USA Today newspaper on Thursday, April 3, 2014, and Monday, April 7, 2014, respectively. A copy of the advertisement and a certification of publication from the publisher are included in Appendix A.

3. An advertisement was placed in Prevention Magazine in their May 2014 issue which was distributed to readers on or about April 24, 2014. A copy of the advertisement and a certification of publication from the publisher are included in Appendix B.

INFORMATION PHONE LINE

4. A dedicated toll-free number was set up on February 17, 2014, providing pre-recorded information and access to a live operator to answer further questions. To date we have received 401 calls, of which 186 callers elected to speak to a live operator.

WEBSITE AND EMAIL

5. A website was set up on February 17, 2014, providing information on the lawsuit and access to case documents. The website includes a summary of the case, a list of important dates, answers to frequently asked questions, key case filings (the operative complaint, motion for preliminary approval, preliminary approval order, long and short form notice, and motion for attorney fees), and contact information. A Spanish translation of both the short and long form notice was also provided. To date the website has been visited 3,192 times.

6. A dedicated email address was set up on February 17, 2014, to answer questions from potential class members. To date we have received and answered 43 emails.

POSTAL CORRESPONDENCE

7. We have received four (4) items of postal mail correspondence from class members.

8. In response to telephone, email, and mail requests, and also requests via phone, letter, and e-mail from Class Counsel, we have mailed a copy of the long-form notice of settlement to fifty-four (54) individuals.

OBJECTIONS

9. The Court's preliminary approval order requires objections to the settlement to be served on Classura and postmarked on or before May 27, 2014. To date we have received one objection to the settlement from Amy X. Yang. A copy of the Ms. Yang's objection is included in Appendix C.

OPT-OUTS

10. The Court's preliminary approval order requires written requests for exclusion from the class (opt-outs) to be mailed to Classura and postmarked on or before May 27, 2014. To date we have received no requests for exclusion (opt-outs) from the settlement.

COSTS

11. The costs incurred to provide notice of the settlement ($80,000.00) plus the costs to administer the settlement ($6,083.50) to class members totals $86,088.00.

I declare under penalty of perjury of the laws of the State of California that the foregoing is true and correct and that this declaration was executed this 10th day of June, 2014, at Atlanta, Georgia.

GAJAN RETNASABA

Appendix A

USA TODAY
A GANNETT COMPANY

VERIFICATION OF PUBLICATION

COMMONWEALTH OF VIRGINIA
COUNTY OF FAIRFAX

Being duly sworn, Toussaint Hutchinson says that he is the principal clerk of USA TODAY, and is duly authorized by USA TODAY to make this affidavit, and is fully acquainted with the facts stated herein: on **Thursday, April 3, 2014 and Monday, April 7, 2014** the following legal advertisement – **Quaker Class Action Settlement**- was published in the national edition of **USA TODAY.**

Principal Clerk of USA TODAY
June 6, 2014

This 6th day of June month
2014 year.

Notary Public

KIRA SHEREEN BAKER
NOTARY PUBLIC
REG. #7510493
MY COMMISSION EXPIRES
8/31/2015
COMMONWEALTH OF VIRGINIA

HEALTH & SCIENCE

How to be 10% happier: Meditate

As co-anchor of *Nightline* and weekend editions of *Good Morning America,* ABC newsman Dan Harris is proud to call himself a professional skeptic. Meditation was one of the things he used to be skeptical about.

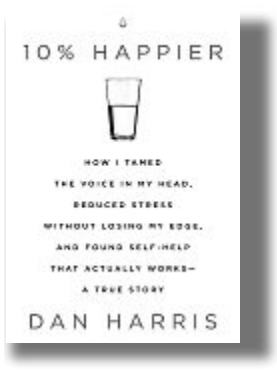
"I always thought meditation was uniquely ridiculous and annoying. It was for people who live in yurts or collect crystals or listen to Cat Stevens," he says. "I am definitely not cut from that cloth."

And yet, after a years-long quest that took him to self-help gurus, spiritual leaders and brain scientists, Harris took up meditation. He's now written a book extolling its life-changing power. It's called *10% Happier: How I Tamed the Voice in My Head, Reduced Stress Without Losing My Edge, and Found Self-Help that Actually Works – A True Story.*

He spoke with USA TODAY contributor Kim Painter.

Q: About a decade ago, you had some life problems that culminated in an on-air panic attack. How did that lead to your interest in meditation?

A: After 9/11, I spent many years covering wars overseas. When I came home, I got depressed and did a really stupid thing, which is that I self-medicated with recreational drugs, including cocaine and Ecstasy. While I wasn't doing it at work and I definitely wasn't doing it while I was on the air, I later learned from my doctor that (the drugs) primed me to have a panic attack on *Good Morning America.* It was extremely embarrassing, and that realization of what a moron I'd been kind of set me off on this strange journey.



Q: What finally turned you to meditation?

A: The science. It does everything from lowering your blood pressure to boosting your immune system. ... It can produce significant changes in your brain, like doing neurosurgery on yourself, in a positive way. It was hard to resist that. And, I was told by people I respected that this was the best way to deal with that voice in our heads that can yank us around so much.

Q: Explain for the layperson: What is this meditation thing?

A: When I say meditation, I'm talking about mindfulness meditation. It's completely secular. There's nothing to join, no dues to pay. It is, in essence, a form of exercise for your brain. It has three very simple steps. One, sit down with your spine straight and close your eyes. Second, try to notice where the feeling of your breath is most prominent, and try to focus on what it feels like every time it comes in and goes out. And the third step is the key. Every time you catch your mind wandering, forgive yourself and bring your attention back to the breath. That moment is the bicep curl for the brain. You are breaking a lifetime habit of just letting your mind run around in useless repetitive and unproductive ways and getting back to focusing on what's happening right now.

Q: Early on, you found meditation hard. Why?

A: Because it's like holding a live fish in your hand. Wrestling a mind to the ground is an extremely difficult thing to do. There's this constant yammering narrator that is wanting, not wanting, judging, comparing ourselves to other people, thinking about the future and past.

IDA MAE ASTUTE, ABC

Dan Harris says meditation helps you train your mind to focus. "Just imagine how useful that is in an age of multitasking."

Q: You say meditation needs a PR makeover. What are some of the misconceptions?

A: One is that it's baloney.

Another is that people think, 'OK, I get it, meditation is a good thing, but it's not for me, I can't do it. My mind is too crazy.'

Another misconception people share is that their lives are too busy to do this. I tell people five minutes is enough.

Everybody has five minutes.

Q: Who are some devotees of meditation that we've heard of?

A: Bill Ford, who was until recently the head of Ford Motor Co. At least one of the founders of Twitter, Jack Dorsey.

Congressman Tim Ryan from Ohio.

Phil Jackson, the new general manager for the New York Knicks, George Stephanopoulos and Diane Sawyer.

Q: *10% Happier* is a great title. Why did you settle on that rather precise, but modest, number?

A: One day I was talking with a colleague who asked, 'What is it with you and this meditation thing?' and I blurted out that I do it because it makes me 10% happier. And I noticed this look of skepticism and scorn on her face immediately vanished and was replaced by a look of sincere interest. It just seemed like the right answer for skeptics. We're bombarded in American culture by all these gurus who tell you that you can fix all your problems by the power of positive thinking. That's baloney. There are no miracle cures. But there is something you can do that will make you significantly happier. Obviously 10% is just a jokey estimate, but it's in the ballpark.

Q: What advice would you give someone who is as skeptical as you were but might want to give meditation a try?

A: Give it five minutes a day, no matter how woo-woo you think it is. You may have 17 children and two full-time jobs, but everybody has five minutes. Tell yourself you are never going to do more, and let it grow organically. If it doesn't work for you, if you don't notice a changed relationship with the voice in your head after a couple of weeks, send me a note on Twitter and let me know.

New allergy pills mean no more shots for some

FDA approves oral immunotherapy for certain grass pollens

Kim Painter
Special for USA TODAY

The first pill that could replace allergy shots for some people has been approved by the Food and Drug Administration.

Oralair, from the French company Stallergenes, only works against certain grass pollens and, like shots, takes several months to start working. So it won't help people allergic to other things or reach grass-allergy sufferers in time to ward off early summer symptoms this year.

But it does signal a shift in immunotherapy — the practice of exposing allergy sufferers to small amounts of the substances that trigger symptoms in order to decrease sensitivity and reduce symptoms when sufferers encounter the real thing.

Up to now, that has usually meant returning to allergists' offices many times over months or years to get shots. Some allergists also offer custom-made drops that can be placed under the tongue, but those have never been approved by the FDA.

Immunotherapy in take-home pill form "is a significant advance and certainly one of the few brand new products we've had in quite a long time," says James Li, chairman of the division of allergy and immunology at Mayo Clinic in Rochester, Minn.

Patients will place the new grass pollen pills under their tongues — the first time in a doctor's office, just in case of severe allergic reactions. After that, the pills will be taken once a day at home.

The pills can cause some side effects: In studies, one-third of patients developed itchy mouths, and some reported throat irritation.

FDA says the pills reduced symptoms and the need for allergy medication by 16% to 30% in studies.

That's somewhat lower than the effectiveness of shots in studies, but the two kinds of therapies have not been compared head to head, Li says.

One big drawback of the new pill is that it treats just one kind of allergy, says Stanley Fineman, an Atlanta allergist and past president of the American College of Allergy, Asthma and Immunology.

"Most patients with allergies that we see here are allergic to grass pollens, tree pollens, ragweed and environmental allergens like dust mite and animal dander," he says. A typical allergy shot contains all those extracts, he says.

But he says the tablets will give some patients a welcome new option. "We are going to have to get some hands-on experience before we say where it's going."

The Stallergenes pill works against five types of grass pollen common in the United States: Sweet Vernal; Orchard; Perennial Rye; Timothy; and Kentucky Blue Grass.

It's been approved for people ages 10 to 65. The company says the pills, which will be available in May, should be started four months before grass allergy season and continued through the season — a time period that differs by geographic region. It did not immediately release a price.

Additional immunotherapy pills are in the pipeline. FDA is expected to approve a second grass pollen pill, from Merck. That pill works against just one variety, Timothy grass. FDA also is reviewing a ragweed pill from Merck and the company has a dust mite pill in studies.

DANNY DRAKE, AP

Evelyn Roldan, left, receives a series of shots for tree, grass and weed pollen from Danielle Gosner in Linwood, N.J.

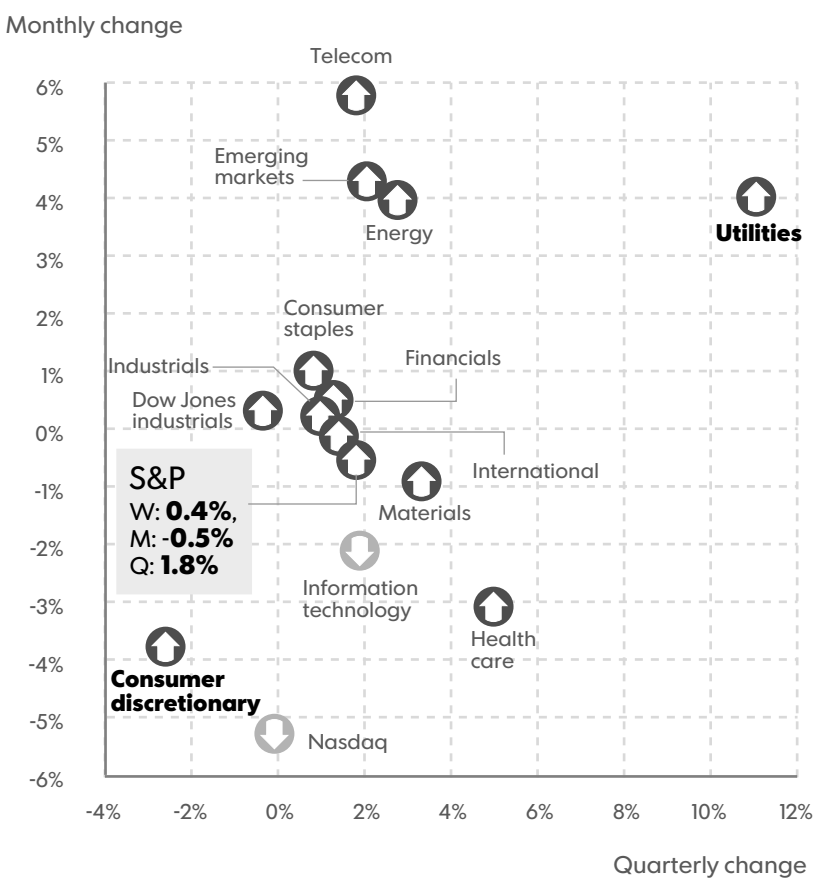
MARKET TRENDS

A WEEKLY LOOK BEHIND THE USA'S STOCK MARKET MOVEMENT

Dow Jones industrial average	Wilshire 5000	S&P 500 Large companies	Nasdaq composite index
⬆0.5% week	⬆0.3% week	⬆0.4% week	⬇0.7% week
⬆0.3% month	⬇1.3% month	⬇0.5% month	⬇5.3% month
⬇0.3% 3 months	⬆1.7% 3 months	⬆1.8% 3 months	⬇0.1% 3 months

FINANCIAL MARKETS AT A GLANCE

Major market, S&P 500 sector and other indexes' performance during the past four and 13 weeks.



MARKET LEADER

Utilities

Investors looking for some shelter from markets turbulence are racing into utilities stocks.

MARKET LAGGARD

Consumer discretionary

Fears the economy and job creation aren't as bright as hoped are cooling consumer stocks.

Gained in past 7 days

Declined in past 7 days

Unchanged in past 7 days

1 – Other indexes include International: Morgan Stanley Capital International Europe, Australasia, Far East Index; and Emerging markets: MSCI Emerging Markets. Source: Standard & Poor's

JIM SERGENT AND KARL GELLES, USA TODAY

EXCHANGE TRADED FUNDS

Major index ETFs

	Ticker	Week	Month	Quarter
Dow Jones industrials	DIA	0.6%	**0.3%**	-0.3%
S&P 500	SPY	0.5%	**-0.7%**	1.9%
PowerShares QQQ	QQQ	-0.8%	**-5.2%**	-0.3%

Sector ETFs

State Street S&P sector index funds

Utilities	XLU	1.1%	**3.5%**	11.2%
Energy	XLE	1.2%	**3.4%**	3.7%
Telecom	IXP	0.7%	**0.9%**	-0.7%
Consumer staples	XLP	0.5%	**0.9%**	1.4%
Industrials	XLI	1.6%	**unch.**	1.7%
Financials	XLF	0.3%	**-0.1%**	1.3%
Materials	XLB	1.2%	**-1.0%**	3.5%
Technology	XLK	-0.4%	**-1.5%**	2.0%
Health care	XLV	0.5%	**-3.3%**	5.0%
Consumer discretionary	XLY	0.6%	**-4.0%**	-2.5%

Note: iShares ETF

SOURCE: STANDARD & POOR'S

ETFs by investment style

Vanguard	Ticker	Week	Month	Quarter
Large-cap value	VTV	0.9%	**1.3%**	3.0%
Midcap value	VOE	1.2%	**0.6%**	4.8%
Small-cap value	VBR	1.3%	**-0.3%**	3.7%
Large-cap blend	VV	0.5%	**-0.9%**	2.0%
Midcap blend	VO	0.6%	**-1.5%**	3.7%
Small-cap blend	VB	0.6%	**-2.7%**	2.1%
Large-cap growth	VUG	unch.	**-3.5%**	0.8%
Midcap growth	VOT	unch.	**-3.5%**	2.5%
Small-cap growth	VBK	-0.3%	**-5.5%**	0.2%

Other index ETFs

iShares

Emerging markets	EEM	1.4%	**4.6%**	2.9%
International	EFA	0.7%	**unch.**	2.1%
Bonds	AGG	-0.1%	**-0.2%**	1.2%
Real estate	ICF	1.6%	**-0.3%**	10.4%
Socially responsible	KLD	0.9%	**-0.5%**	2.5%
Gold	IAU	0.8%	**-2.5%**	5.2%

The week's top stocks

Top stocks in each industry group from the S&P 500, 400 and 600

Consumer discretionary

W: 0.4% **M:** -3.8% **Q:** -2.6%

Autos
Month: -1.0%
Quarter: -0.4%

Peugeot	9.1%
Fiat	8.0%
Porsche	7.4%
Daimler	6.0%
Renault	5.2%

Consumer goods
Month: -2.8%
Quarter: -2.7%

M/I Schottenstein	6.3%
Ellis Perry	6.2%
Sturm Ruger	5.7%
Meritage	5.6%
Electrolux	5.1%

Consumer services
Month: -0.8%
Quarter: -0.1%

Sands China	12.0%
Galaxy Entmt	10.9%
Multimda Compa	6.7%
Marcus	6.0%
Matthews	4.9%

Media
Month: -3.3%
Quarter: -0.3%

Sizmek	6.5%
Mediaset	6.3%
WPP	4.2%
21st Century Fox	4.0%
Cablevision Sys.	3.7%

Retailing
Month: -5.6%
Quarter: -5.0%

Staples	7.0%
Best Buy	6.3%
Cato	6.1%
LKQ	6.1%
Sonic Automotive	6.1%

Consumer staples

W: 0.3% **M:** 1.0% **Q:** 0.8%

Food retailing
Month: -0.1%
Quarter: 2.5%

Supervalu	5.0%
Carrefour	4.7%
MEetro	4.3%
Delhaize	3.3%
Spartan Stores	2.3%

Food & beverage
Month: 1.0%
Quarter: 1.3%

Darling	7.4%
Cal Maine Foods	7.2%
Dean Foods	6.9%
B&G Foods	5.7%
Heineken	4.8%

Household goods
Month: 2.0%
Quarter: -0.7%

Medifast	8.6%
Avon Products	4.9%
CentralGarden&Pet	4.2%
Henkel	3.3%
SCA-Svenska Cell.	1.3%

1 — INDUSTRY GROUP'S % CHANGES BASED ON S&P 1500

Energy

W: 1.0% **M:** 4.0% **Q:** 2.8%

Energy[1]
Month: 4.0%
Quarter: 3.0%

Anadarko Ptrlm	19.0%
AMEC	11.4%
WPX Energy	8.6%
Alpha Nat. Res.	7.0%
Peabody Energy	6.8%

Financials

W: 0.2% **M:** 0.5% **Q:** 1.3%

Banks
Month: 1.3%
Quarter: 5.4%

Bc. Monte Paschi	17.1%
Intesa SanPaolo	11.6%
Commerzbank	11.4%
Bank of Ireland	11.1%

Financials[1]
Month: -0.4%
Quarter: -1.6%

Aberdeen Asset	11.3%
Hng Kng Ex. Cleari	10.9%
ING Groep	8.1%
SWS	6.6%

Insurance
Month: unch.
Quarter: -1.6%

Universal Insurance	6.6%
RSA Insurance	6.1%
Assicurazioni Gen.	5.4%
AIA	5.1%
eHealth	4.2%

Real estate
Month: -0.4%
Quarter: 7.8%

Sun Hung Kai Prps.	7.4%
Cheung Kong	4.4%
Segro	4.2%
HCP	3.4%
LaSalle Hotel	3.3%

Industrials

W: 1.4% **M:** 0.2% **Q:** 1.0%

Capital goods
Month: -0.4%
Quarter: 0.9%

Metso Oyj	25.0%
Alstom	14.7%
Vestas Wind Sys.	13.3%
AZZ	9.2%
Valmet	8.0%

Business services
Month: -0.9%
Quarter: -3.1%

Babcock	10.9%
ADT	8.4%
G4S	7.5%
The Brink's	6.3%
Pitney Bowes	5.9%

Transportation
Month: 1.2%
Quarter: 3.3%

SkyWest	9.3%
Deutsche Lufthansa	8.2%
Int'l Cons. Air	7.2%
Knight Trans.	6.4%
PostNL	5.1%

Information technology

W: -0.7% **M:** -2.1% **Q:** 1.9%

Software
Month: -5.4%
Quarter: -0.3%

Leidos	6.7%
Rovi	6.0%
Igate	4.5%
VIRTUSA	4.0%
Rackspace Hosting	3.9%

Tech hardware
Month: 1.1%
Quarter: 3.1%

Synnex	31.1%
Intevac	12.3%
Mercury Systems	8.8%
Bel Fuse	7.2%
Belden	6.9%

Semiconductors
Month: 2.3%
Quarter: 6.9%

Synaptics	5.1%
Diodes	4.5%
Samsung	3.5%
Cirrus Logic	3.4%
Rubicon Tech	3.4%

Health Care

W: 0.5% **M:** -3.1% **Q:** 5.0%

Health care[1]
Month: 0.1%
Quarter: 4.9%

Intuitive Surgical	16.2%
Align Tech.	8.0%
West Pharma. Svcs	6.8%
Steris	6.4%
Cryolife	5.4%

Pharmaceuticals
Month: -4.9%
Quarter: 4.3%

Cambrex	9.9%
Questcor Pharma.	9.3%
Gilead Sciences	5.3%
Affymetrix	4.7%
Mylan	3.7%

Materials

W: 1.1% **M:** -0.9% **Q:** 3.3%

Materials[1]
Month: -0.5%
Quarter: 3.9%

SSAB	20.6%
Balchem	16.6%
Lafarge	14.7%
Holcim	13.2%

Telecom

W: 1.4% **M:** 5.8% **Q:** 1.8%

Telecom[1]
Month: 5.7%
Quarter: 1.7%

USA Mobility	6.7%
Portugal Telecom	5.8%
Windstream	5.0%
Telecom Italia	4.7%

Utilities

W: 1.1% **M:** 4.0% **Q:** 11.1%

Utilities[1]
Month: 3.7%
Quarter: 10.5%

PG&E	6.2%
ONE Gas	4.3%
Elec. de France	4.2%
Fortum	3.8%
Entergy	3.6%

Amazon makes bet on what can be, not what is

▶ **CONTINUED FROM** 1B

digital platforms such as Amazon — especially Amazon — are the driver of all desires and the provider of all satisfaction.

An important aspect of talking the talk is to get others to do it for you, to convince them — media, analysts such as those at Forrester and conference speakers — of your inevitability.

The *Times* goes on to say, in by-the-by fashion, that Fire TV is part of Amazon's effort "to move from selling goods produced by others, which is traditionally a low-margin business, to presiding over the entire process of creation and consumption."

In addition to dismissing the totality of the retail industry, which indeed Amazon has a "vested interest" in undermining, this casual description goes on to define something that sounds curiously close to a Soviet-style dream of state commerce.

Again, Fire TV is a set-top box. Although set-top box makers have always felt that their devices could be a shortcut to taking over television — still a far more successful marketing medium than anything that exists in the digital world — TV has offered sufficient hurdles to continually dampen these aspirations.

For one thing, television is easy to use, and set-top boxes are much harder. TV viewers are older, hence, adoption of more complicated devices has been slower than adoption of various mobile devices that have siphoned the young from television.

Never fear.

"We're missionaries about inventing and simplifying on behalf of customers," said Amazon executive Peter Larsen, who spearheaded the Fire announcement. Not just product designers and manufacturers ... *missionaries*.

Still, in a real sense, technology companies such as Amazon have made good on their utopian and messianic language. They *have* reinvented the world — or at least made the world more dependent on their devices.

DON EMMERT, AFP/GETTY IMAGES

Amazon Kindle Vice President Peter Larsen introduces the Amazon Fire TV streaming device on April 2 in New York.

"We're missionaries about inventing and simplifying on behalf of customers."

Peter Larsen, Amazon Kindle vice president

In part, they have done this by taking the emphasis off the device itself as a singular appliance — a commodity — and putting it on the much larger mission and transformative context. Fire TV is, as the *Times* puts it, an "ecosystem." This word is itself a step up from the word "platform" that raised the ante on the idea of a mere device.

In fact, while the *Times* was going all out here, other media outlets were skeptical, pointing out that Amazon's new device offered limited advantages over other set-top boxes and was more expensive, to boot. The latter seemed to miss the point: You don't want to win on the basis of what is, but of what can be. The smart money bets on transformation, which is open-ended, rather than reality, which is limited and commoditized.

Amazon has partnered with a company called Magisto, which makes editing software available through the new box.

"We see a real opportunity to use television as a tool for personal storytelling and personal communications, as opposed to just broadcast communications," said Magisto Chief Marketing Officer Reid Genauer as part of the announcement.

Just broadcast communications. ... So small-time.

The goal is to connect it all. Amazon wants to own the device you need to get the products it makes and control access to its customer base, hence, amassing super data streams ... or anyway, have everyone believe it is on its way to doing so, meaning everyone else ought to roll over and make way.

Curiously, corporations, traditional ones anyway, used to keep quiet about such hegemonic, evil-empire ambitions. They didn't want to invite scrutiny and regulation; massive horizontal and vertical control has had mixed results, anyway; and such ambitions strain belief.

But in the new world, where engineers turn out to be poets of a sort, it's the words themselves — not merely about product features but about the future and human potential and ultimate world takeover — that make your ho-hum device seem sexy.

Appendix B

RODALE

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Verification of Publication

Commonwealth of Pennsylvania
County of Lehigh

Being duly sworn, Joseph A. Saliba says that he is the Credit Manager of Rodale Inc. dba Prevention Magazine, and is duly authorized by Rodale Inc., to make this affidavit and is fully acquainted with the facts stated herein: the legal notice advertisement for Classaura LLC was published in the May 2014 issue of Prevention Magazine.

Joseph A. Saliba
Credit Manager
Rodale Inc.

LEGAL NOTICE

If You Bought An Eligible Quaker Product At Any Time From February 3, 2006 To April 18, 2014, You May Be Affected By A Proposed Class Action Settlement

There is a class action Settlement of a lawsuit challenging the labeling and marketing of certain Quaker Chewy bars, Oatmeal To-Go, and Instant Quaker Oatmeal products. Quaker denies that it did anything wrong and stands by its products and marketing. The Court did not rule in favor of either party.

WHO IS INCLUDED IN THE SETTLEMENT?

Anyone who bought an eligible Quaker product at any time from February 3, 2006 to April 18, 2014. A full list of these Products is available at www.QuakerLawsuit.com or by calling 1-(888) 963-9429.

WHAT DOES THIS SETTLEMENT PROVIDE?

The Products at issue in the Litigation include varieties of Quaker Chewy bars, Oatmeal To Go, and Instant Quaker Oatmeal. Currently, none of the Quaker Chewy bars named in the lawsuit contains any partially hydrogenated oil ingredient(s) ("PHOs"), and all other Products contain either no PHOs or an amount that the United States Food and Drug Administration requires to be declared on the Products' Nutrition Facts boxes as "0 grams" trans fat. Under the Settlement Agreement, Quaker has agreed that, no later than December 31, 2015, it will remove PHOs from the Oatmeal To Go and Instant Quaker Oatmeal Products that currently contain them. Quaker also agrees not to re-introduce PHOs into those products for at least 10 years thereafter. Quaker agrees not to introduce PHOs into Quaker Chewy bars, or the Instant Quaker Oatmeal Products that do not currently contain PHOs, for a period of 10 years. Finally, Quaker agrees that, by December 31, 2014, it will cease making the statement "contains a dietarily insignificant amount of trans fat" on the labels of any of the Products that contain 0.2 grams or more of artificial trans fat per serving. The Settlement Agreement provides that, in exchange for Quaker's agreement to make these changes, Class Members will release claims against Quaker that were or could have been asserted in this lawsuit. Full details about the Settlement, including the Release, are contained in a Settlement Agreement called the "Class Action Settlement Agreement," available at www.QuakerLawsuit.com.

WHAT ARE YOUR OPTIONS?

If you are a Class Member, you may (1) do nothing; (2) exclude yourself; (3) object to the settlement; and/or (4) attend a hearing about the fairness of the Settlement. If you do nothing, the Settlement (if approved) will release all claims asserted in the lawsuit, including those for injunctive relief or damages. The Release is set forth in the Settlement Agreement, available at www.QuakerLawsuit.com.

If you do not want to be bound by the Settlement Agreement, you must exclude yourself by letter postmarked by May 27, 2014. If you exclude yourself, you can be part of another lawsuit against Quaker about the claims in this case. If you do not exclude yourself, and therefore remain a Class Member, you may object to the Settlement Agreement, but you may not be part of another lawsuit or seek additional relief related to the claims in this case. Objections must be filed with the Court and served on Class Counsel and Defense Counsel by May 27, 2014.

PLEASE SEE THE DETAILED NOTICE at www.QuakerLawsuit.com or call 1-(888) 963-9429 for complete instructions on how to object or exclude yourself, and other important information. On June 26, 2014, at 1:30pm the Court will hold a Fairness Hearing at the United States District Court for the Northern District of California, before the Honorable Richard Seeborg, District Judge, in Courtroom 3, Phillip Burton Federal Building and United States Courthouse, 17th Floor, 450 Golden Gate Avenue, San Francisco, California 94102, to consider approval of the Settlement, payment of attorneys' fees and expenses of up to $760,000 to lawyers for the Class (Ronald A. Marron of the Law Office of Ronald Marron, and Gregory S. Weston and Jack Fitzgerald of The Weston Firm), payments of up to $750 for each of the Representative Plaintiffs, and related issues. The motion(s) by Class Counsel for those fees, costs, and incentive awards will be available on the settlement website discussed above after they are filed with the Court and before the deadline for Objections or Requests for Exclusion. You may appear at the hearing, but you do not have to do so.

HOW CAN YOU GET MORE INFORMATION?

Visit www.QuakerLawsuit.com or call 1-(888) 963-9429; write to Interim Class Counsel, Gregory S. Weston, the Weston Firm, 1405 Morena Blvd., Suite 201, San Diego, CA 92110; or e-mail greg@westonfirm.com.