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Superior Court of CA, County of Santa Clara

Case #1-14-CV-274434 Filing #G-79812

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on behalf of themselves and others similarly situated

12  
13 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
14 FOR THE COUNTY OF SANTA CLARA  
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17 KELLY ROMERO and RICHARD H.  
18 JOSEPH, on behalf of themselves and all  
others similarly situated,

19 Plaintiffs,

20 v.

21 LOACKER USA, INC., a Delaware  
22 corporation,

23 Defendant.  
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Case No. 1-14-CV-274434

ASSIGNED FOR ALL PURPOSES TO:

Hon. Peter H. Kirwan

**[PROPOSED] FINAL JUDGMENT AND  
ORDER APPROVING SETTLEMENT**

Hearing Date: January 8, 2016

Time: 9:00 a.m.

Dept.: 1

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**[PROPOSED] FINAL JUDGMENT AND ORDER APPROVING SETTLEMENT**

1 This is a putative class action by plaintiffs Kelly Romero and Richard H. Joseph  
2 (collectively, "Plaintiffs") on behalf of themselves and other consumers of packaged Quadratini  
3 wafer products or sandwich packaged wafer products sold by defendant Loacker USA, Inc.  
4 ("Defendant"). Plaintiffs allege that Defendant misbranded its products as "All Natural" and  
5 having "All Natural Ingredients Guaranteed" or statements of similar import, but that the products  
6 actually contain artificial, synthetic, chemical and highly processed ingredients, as well as  
7 artificial chemical preservatives and flavorings, including cocoa processed with a synthetic alkali,  
8 sodium acid pyrophosphate, soy lecithin, sodium hydrogen carbonate, glucose syrup and  
9 dextrose.

10 The operative Class Action Complaint ("CAC"), filed on December 12, 2014, asserts  
11 eleven causes of action for: (1) unlawful business practices in violation of Business and  
12 Professions Code section 17200 et seq.; (2) unfair business practices in violation of Business and  
13 Professions Code section 17200 et seq.; (3) fraudulent business practices in violation of Business  
14 and Professions Code section 17200 et seq.; (4) misleading advertising in violation of Business  
15 and Professions Code section 17500 et seq.; (5) untrue advertising in violation of Business and  
16 Professions Code section 17500 et seq.; (6) violation of the Consumer Legal Remedies Act,  
17 California Civil Code section 1750 et seq.; (7) breach of express warranty; (8) restitution based  
18 on quasi-contract/unjust enrichment; (9) common law fraud; (10) negligent misrepresentation;  
19 and (11) breach of contract.

20 The putative class is defined as "[a]ll persons in the United States who, at any time from  
21 March 6, 2010 to the present, made retail purchases of one or more of the Misbranded Products  
22 that were labeled 'All Natural' and contained one or more of the following ingredients: cocoa  
23 processed with alkali, sodium acid pyrophosphate, soy lecithin, sodium hydrogen carbonate,  
24 glucose syrup, dextrose, milk powders, coffee powders, fruit powders, sugar, and coconut oil."

25 On September 3, 2015, the Court issued its order granting Plaintiffs' motion for  
26 preliminary approval of class action settlement. Plaintiffs now move for final approval of the  
27 settlement as well as attorneys' fees, expenses, and incentive awards.

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1 Under the parties' Stipulation of Class Action Settlement (the "Stipulation"), Defendant  
2 agrees to the creation of a common fund in the amount of \$1,200,000, and each "Settlement Class  
3 Member" is eligible for a \$3.29 refund for every product for which they submit a valid and  
4 adequate "Proof of Purchase," which includes receipts, product packaging, or other  
5 documentation from a third-party commercial source reasonable establishing the fact and date of  
6 purchase during the Settlement Class Period of qualifying products. Settlement Class Members  
7 who do not have valid Proofs of Purchase are eligible for a \$3.29 refund for each product they  
8 purchased up to a maximum of five (5) products. Each Settlement Class Member must complete  
9 and sign a Claim Form within 60 days of the Notice Date (30 days after preliminary approval) to  
10 receive an award. Claims can be submitted online through the settlement website or via mail.  
11 Any remaining funds will be distributed as *cy pres* to an appropriate charity consistent with  
12 applicable law. Defendant also agrees that labels bearing the representation that the challenged  
13 Quadratini products are "All Natural" or "natural" will no longer be used, and Defendant will  
14 remove all statements from its websites representing that its Quadratini products are "All Natural"  
15 or "natural."

16 The common fund will also be used to pay for incentive awards of \$2,500 for each of the  
17 named plaintiffs, attorney's fees in the amount of \$400,000, and payment of litigation expenses.

18 According to the final approval papers, CPT Group, Inc. ("CPT"), the Court-appointed  
19 claims administrator, estimates that the notice plan in this case likely exceeds 89 percent. CPT  
20 provides notice via publication, a settlement website, and Internet banner ads. (Declaration of  
21 Abel E. Morales with Respect to Notice and Claims Administration ("Morales Decl."), ¶ 4.) CPT  
22 also activated and maintained a toll-free telephone number for settlement class members to  
23 receive information about the settlement. (Morales Decl., ¶ 5.) The short form notice of the  
24 settlement was published in a 1/3 page advertisement in People Magazine and in a 1/8 page  
25 advertisement in National Geographic. (Morales Decl., ¶ 7.) As of December 10, 2015, there  
26 were 194,333 page views from 21,371 visitors on the settlement administration website and 719  
27 calls received on the toll-free number. (Morales Decl., ¶¶ 9, 11.) As of that same date, CPT  
28 received claim forms 11,191 valid claim forms, with no requests for exclusion and no objections.

1 (Morales Decl., ¶¶ 13-15.) The average payment per authorized claimant is \$46.49. (Morales  
2 Decl., ¶ 18.)

3 In connection with the prior motion for preliminary approval of the class action  
4 settlement, the Court found that the proposed settlement provides a fair and reasonable  
5 compromise to Plaintiffs' claims, and also includes meaningful injunctive relief that addresses the  
6 core misrepresentations alleged in this action. The Court finds no reason to deviate from this  
7 finding now, especially in light of the amount to be paid to claimants and the fact that there are no  
8 objectors to the settlement.

9 Plaintiffs' counsel seeks attorney's fees in the amount of \$400,000 of the settlement  
10 amount plus \$25,000 in costs. (Declaration of Anthony J. Orshansky in Support of Plaintiffs'  
11 Unopposed Motion for Attorneys' Fees, Expenses, and Incentive Awards ("Orshansky Decl."),  
12 ¶ 16.) The fee request represents one-third of the common fund, which is not an uncommon  
13 contingency fee allocation. This award is presumptively reasonable under the "common fund"  
14 doctrine, which allows a party recovering a fund for the benefit of others to recover attorney's  
15 fees from the fund itself. (See *City and County of San Francisco v. Sweet* (1995) 12 Cal.4th 105,  
16 110-111.) As a cross-check on the reasonableness of the fee award, Plaintiffs' counsel submits  
17 that their lodestar totals \$286,946.50. Therefore, the requested fee amount includes a 1.39  
18 multiplier. The Court finds that this multiplier is justified given the contingent risk and the  
19 significant results achieved for the class. (See *Lealao v. Beneficial California, Inc.* (2000) 82  
20 Cal.App.4th 19, 45-46.)

21 Plaintiffs seek incentive awards of \$2,500 for each of the two class representatives. In  
22 support of this request, Plaintiffs' counsel states that the class representatives did the following:  
23 (a) retained counsel; (b) provided counsel with information necessary to draft the complaint  
24 including the products they purchased, the location and frequency of such purchases, and the  
25 reasons for selection of the products; (c) reviewed and commented on the draft complaint; (d)  
26 monitored the case, which included regular calls with counsel as well as the review of documents;  
27 (e) participated in mediation; (f) discussed the settlement terms; and (g) understood and agreed to  
28 each of the responsibilities of a named plaintiff and putative class representative. (Orshansky

1 Decl., ¶ 47.) Plaintiffs have also remained actively involved in the case after the execution of the  
2 settlement. (Orshansky Decl., ¶ 48.) Plaintiffs were also concerned about the publicity a class  
3 action might generate. (Orshansky Decl., ¶ 49.) Accordingly, the Court finds the incentive  
4 awards are appropriate based on the amount of time and effort expended by the class  
5 representatives in assistance of the prosecution of this suit and the risks of filing suit, including  
6 reputational harms.

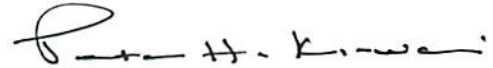
7 Plaintiffs' counsel seeks reimbursement for costs incurred in the amount of \$20,290.23.  
8 (Orshansky Decl., ¶ 46.) CPT's estimated fees and costs are \$262,891.35 through completion,  
9 but CPT has discounted the total by 5% as a professional courtesy, bringing the total to  
10 \$249,746.79. (Morales Decl., ¶ 19.) These amounts are approved.

11 In sum, Plaintiffs' motion for final approval of the class action settlement and the motion  
12 for attorney's fees, costs, expenses, and incentive awards are GRANTED.

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IT IS SO ORDERED.

Dated: 1 | 11 | 16



Hon. Peter H. Kirwan  
Judge of the Superior Court