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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF ALAMEDA

ROHINI KUMAR, an individual, on behalf of  
herself, the general public and those similarly  
situated,  
  
Plaintiff,  
  
v.  
  
SAFEWAY, INC.

Defendant.

**FILED**  
ALAMEDA COUNTY

OCT 27 2017

CLERK OF THE SUPERIOR COURT  
By *Cheryl* Deputy

CASE NO: RG 14726707

**CLASS ACTION**

~~PROPOSED~~ ORDER GRANTING  
PRELIMINARY APPROVAL OF CLASS  
ACTION SETTLEMENT

DATE: October 27, 2017  
TIME: 10:00  
CTRM: Dept. 21  
JUDGE: Hon. Winifred Smith  
Trial Date: None

Reservation Number: R-1894397

1 Plaintiff Rohini Kumar (“Class Representative”) has moved the Court for preliminary  
2 approval of a proposed class action settlement with Defendant Safeway Inc. (“Safeway” or  
3 “Defendant”), the terms and conditions of which are set forth in the Settlement Agreement filed  
4 with the Court on September 20, 2017 (“Settlement Agreement”).

5 This case concerns the marketing and labeling of Safeway Select Extra Virgin Olive Oil,  
6 Safeway Select Pure Olive Oil, and/or Safeway Select Extra Light in Flavor (the “Products”).

7 Plaintiff contends that the Products are mislabeled as “extra virgin” and/or as “Imported  
8 from Italy.” In particular, Plaintiff alleges the representation “Imported from Italy” is misleading  
9 because most of the oil was extracted in countries other than Italy from olives grown in those  
10 countries. Plaintiff also alleges that the representation “Extra Virgin,” is also misleading because  
11 Defendant’s procurement, bottling, and distribution practices did not adequately ensure that the  
12 oil would meet the “extra virgin” standard through the date of retail sale or the “best by” date on  
13 the bottles. Plaintiff alleges that the Extra Virgin product has been mislabeled as “Extra Virgin”  
14 since at least four years prior to the filing of the complaint (i.e, since March 23, 2010) and that all  
15 the products were mislabeled as “Imported from Italy” from January 1, 2012 to July 31, 2015.

16 Plaintiff alleged claims for violations of the California Consumer Legal Remedies Act  
17 (“CLRA”); false advertising under California Business and Professions Code sections 17500, *et*  
18 *seq.*; and unfair business practices under California Business and Professions Code sections  
19 17200, *et seq.*; and misrepresentation. Plaintiff sought to pursue these claims on behalf of herself  
20 and all purchasers of the Products.

21 Plaintiff contends that, by marketing the olive oil as “extra virgin” and/or as “imported  
22 from Italy,” Defendant caused people to purchase the Products who would not otherwise have  
23 done so. She also contends that the Products were sold at a higher price than they would have  
24 been sold without the misstatements. Plaintiff seeks to recover, on behalf of a class of all  
25 purchasers other than re-sellers, the dollar volume of extra sales, and the dollar amount of the  
26 “premium” price that is attributable to the alleged misrepresentations. Plaintiff asserts that  
27 approximately 12 million Products have been sold nationwide during the relevant periods at an  
28 average retail price of between \$6 and \$7. Plaintiff believes that, if she was successful at trial on

1 all of her claims, she could win damages or restitution of up to approximately \$13 million on a  
2 nationwide basis, which equates to an average of approximately \$0.73 per bottle of olive oil  
3 purchased.

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

10 The history of this litigation is summarized in Part I of the Settlement Agreement. In brief,  
11 this case was filed in May 2014. Substantial discovery was taken by both parties. Defendant  
12 produced to Plaintiff's Counsel thousands of pages of documents. Plaintiff's counsel also deposed  
13 eight of Defendants' employees and requested and received written discovery responses from  
14 Defendant and several third parties. This Court has ruled on a demurrer and motion to strike the  
15 Complaint. Plaintiff moved for and was granted class certification. The settlement was negotiated  
16 with the assistance of the Honorable William Cahill (Ret.) and Judge Evelio Grillo of this Court.

17 The terms of the settlement are summarized in the proposed Long Form Notice to  
18 Settlement Class Members, which is attached as Exhibit B1 to the Settlement Agreement. In brief,  
19 Safeway has changed the packaging and labeling of the Products. These changes will be  
20 incorporated in a court injunction. In addition, all Settlement Class Members may submit a claim  
21 for a refund of \$.50 in cash or \$1.50 in a Safeway Voucher per Safeway Select Extra Virgin Olive  
22 Oil purchased between May 23, 2010 and December 31, 2011, inclusive; \$.50 in cash or \$1.50 in  
23 a Safeway Voucher per Product purchased between January 1, 2012 and July 31, 2015, inclusive,  
24 and/or \$.25 in cash or \$.75 in a Safeway Voucher per Safeway Select Extra Virgin Olive Oil  
25 purchased from August 1, 2015 to December 16, 2016, inclusive. Claims will be paid even  
26 without proof of purchase, but only up to a total of \$2.50 in cash or \$7.50 in Safeway Vouchers  
27 per household or business. Thus, proof of purchase is required for claims regarding purchases of  
28 more than five of the Products. However, proof of purchase can be provided not only with a store

1 receipt, but also by providing a Safeway Club Card number (or the telephone number linked to a  
2 Club Card) that was used to make a purchase.

3 If the total aggregate value of all cash and Voucher payments for claims unsupported by  
4 Proof of Purchase exceeds \$300,000, then each such payment shall be reduced pro-rata.

5 As part of the settlement, Plaintiff's attorneys may apply to this Court to award them up to  
6 \$1,426,500 from Safeway to pay their attorneys' fees and expenses, plus up to \$6,490 from  
7 Safeway as a payment to the Class Representative. Such amounts must be approved by the Court,  
8 and the Court will defer any ruling on the appropriateness of such awards until the final approval  
9 hearing.

10 Notice is to be provided by on a Settlement Website. In addition, a black and white  
11 version of the Print Publication Notice will be published once per week for four successive weeks  
12 in the East Bay Times. Notice will also be provided using Safeway's Catalina coupon system at  
13 point of sale to all purchasers of Safeway Select Olive Oil beginning on the Notice Date and  
14 continuing for 60 days thereafter. Additional online and/or published notice shall be provided on  
15 websites and/or social media platforms accessible to desktop and mobile users, so that overall  
16 notice of the Settlement (including the Online Notice, Print Publication Notice and the Catalina  
17 Coupon Notice) is reasonably calculated to apprise the Settlement Class Members of the  
18 settlement. In particular, to devise the online notice plan, the Claim Administrator has relied on  
19 data from GtK MediaMark Research & Intelligence, LLC, a nationally accredited research firm  
20 that provides data on consumer readership of advertising media, which shows that Safeway olive  
21 oil consumers are more likely to consume an average amount or more of internet media a week as  
22 compared to the adult population in the states in which 95.7% of people have shopped at Safeway  
23 in the last six months and who also use store brand olive oil. The Claim administrator has also  
24 used data from comStore, Inc., which measures audiences, brands, and consumer behavior, to  
25 identify how to target settlement class members. The Claim administrator will cause publication  
26 of at least 88 million internet impressions of an advertisement which, when clicked, will bring  
27 users to the Settlement Website. Impressions will be delivered via the Google Display Network,  
28 which reaches over 90% of internet users across more than two million websites, and Facebook,

1 which is the largest social media platform, reaching millions of consumers daily. No later than  
2 February 2, 2017, the Claim Administrator shall submit a declaration to the Court under penalty  
3 of perjury attesting to the number of impressions delivered and the number of click-throughs to  
4 the Settlement Website

5 All of these notices will link or point to the Settlement Website, which contains a detailed  
6 class notice, including the procedures for class members to exclude themselves from the  
7 settlement or object, as well as a copy of the Settlement Agreement and motion papers filed in  
8 connection with the settlement. Safeway alone will pay the notice costs.

9 The parties have proposed Kurtzman Carson Consultants as Claim Administrator, a well-  
10 known and experienced class action administrator, to send the notices and receive and process  
11 claim forms.

12 Having considered all matters submitted to it at the hearing on the motion and otherwise,  
13 including the complete record of this action, and good cause appearing therefore, the Court grants  
14 preliminary approval and hereby finds and concludes as follows:

15 1. The capitalized terms used in this Order shall have the same meaning as defined  
16 in the Settlement Agreement except as otherwise expressly provided.

17 2. The Court preliminarily approves the Settlement Agreement as within the range  
18 of possible final approval, and as meriting submission to the Settlement Class for its  
19 consideration. The parties' Agreement was reached as a result of extensive arm's length  
20 negotiations between the parties and their counsel. This included five separate in-person  
21 mediations or settlement conferences with Judge Evelio Grillo of the Alameda Superior Court and  
22 Judge William Cahill (retired) of JAMS ADR, Inc. ("JAMS") in San Francisco, California, the  
23 last of which took place on June 21, 2017. Additionally, before entering into the Agreement,  
24 Defendant produced to Plaintiff's Counsel thousands of pages of documents. Plaintiff's counsel  
25 also took eight depositions of Defendant's employees, requested and received written discovery  
26 responses from Defendant and several third parties, and conducted expert discovery. Thus,  
27 Plaintiff and her counsel had sufficient information to evaluate the strengths and weaknesses of  
28 the case and to conduct informed settlement discussions.

1           3. For purposes of the settlement only, the Court provisionally certifies the  
2 Settlement Classes, which consists of (i) All Persons who, between May 23, 2010 and December  
3 16, 2016, purchased, at any Safeway retail store in the United States, except for purposes of  
4 resale, any Safeway Select Extra Virgin Olive Oil and (ii) All Persons who, between January 1,  
5 2012 and July 31, 2015, purchased, except for purposes of resale, at any Safeway retail store in  
6 the United States, any Safeway Select Pure Olive Oil or Safeway Select Extra Light in Flavor  
7 Olive Oil. "Excluded Persons" from the Settlement Classes are (1) the Honorable Judges  
8 Winifred Smith; Wynne Carvill; Evelio Grillo; William Cahill (Ret.); (2) any member of their  
9 immediate families; (3) any government entity; (4) Defendant; (5) any entity in which Defendant  
10 has a controlling interest; (6) any of Defendant's past or present subsidiaries, parents, affiliates,  
11 and officers, directors, employees, legal representatives, heirs, successors, or assigns; (7) counsel  
12 for the Parties; and (8) any Persons or Businesses who timely exclude themselves from the  
13 Settlement Class(es).

14           4. The Court preliminarily finds, solely for purposes of considering this settlement,  
15 that the requirements of Civil Procedure Code section 382 and Civil Code section 1781 are  
16 conditionally satisfied, including requirements that the Settlement Class Members are too  
17 numerous to be joined in a single action; that common issues of law and fact exist and  
18 predominate; that the claims of the Class Representative are typical of the claims of the  
19 Settlement Class Members; that the Class Representative and Class Counsel can adequately  
20 protect the interests of the Settlement Class Members; and that a settlement class is superior to  
21 alternative means of resolving the claims and disputes at issue in this Litigation.

22           5. The Court finds that KCC LLC has the requisite experience and expertise to  
23 serve as claim administrator and appoints KCC LLC to that role.

24           6. Notice is to be provided as described in Section V of the Settlement Agreement  
25 and in the Declaration of Carla Peak. The notice plan consists of four parts: (1) a settlement  
26 website; (2) a black and white publication in the East Bay Times, published once per week for  
27 four consecutive weeks; (3) individual/direct notice at the point of sale to purchasers of Safeway  
28 Select Olive Oil for sixty days; and (4) online notice ad published using the Google Display

1 Network and Facebook. No later than February 2, 2018, the Claim Administrator shall submit a  
2 declaration to the Court under penalty of perjury attesting to the number of impressions delivered  
3 and the number of click-throughs to the Settlement Website.

4 7. The Claim Administrator also will receive and process Claim Forms. Defendant  
5 alone will pay the notice and administration costs associated with the settlement.

6 8. The Court preliminarily finds that the proposed notice plan constitutes the best  
7 notice practicable under the circumstances and constitutes due and sufficient notice to the  
8 Settlement Class of the pendency of the Litigation. In particular, the Court preliminarily  
9 approves, as to form and content, the Claim Form and the Notices, substantially similar to the  
10 forms attached as Exhibits A and B1 to B4 to the Settlement Agreement and as Exhibit 2 to the  
11 Declaration of Carla Peak. The Claim Form and all of the notices are written in plain English, are  
12 easy to comprehend, and fully comply with the requirements of the Due Process Clause of the  
13 California Constitution and any other applicable law. The Parties shall have discretion to jointly  
14 make non-material minor revisions to the Claim Form or Notices. Responsibility regarding  
15 settlement administration, including, but not limited to, notice and related procedures, shall be  
16 performed by the Claim Administrator, subject to the oversight of the Parties and this Court as  
17 described in the Settlement Agreement.

18 9. The Court conditionally designates the law firm of Gutride Safier LLP and  
19 Tycko & Zavareei LLP as Class Counsel and Rohini Kumar as Class Representative for purposes  
20 of this settlement. The Court preliminarily finds that the Class Representative and Class Counsel  
21 fairly and adequately represent and protect the interests of the absent Settlement Class Members.  
22 The Court designates, and approves, Kurtzman Carson Consultants to serve as Claim  
23 Administrator.

24 10. Since the Settlement Agreement is within the range of reasonableness and  
25 possible final approval, notice shall be provided to the Settlement Class pursuant to the  
26 Settlement Agreement, as follows:

27 a. On or before 30 days after entry of this order of Preliminary  
28 Approval, the Claim Administrator shall establish the Settlement Website, which shall contain

1 the Long Form Notice in both downloadable PDF format and HTML format with a clickable  
2 table of contents; answers to frequently asked questions; a Contact Information page that  
3 includes the address for the Claim Administrator and addresses and telephone numbers for  
4 Plaintiff's Counsel and Defendant's Counsel; the Settlement Agreement; the signed order of  
5 Preliminary Approval; a downloadable and online version of the Claim Form; a downloadable  
6 and online version of the form by which Settlement Class Members may exclude themselves  
7 from the Settlement Class; and (when they become available) the motion for final approval and  
8 Plaintiff's application(s) for Attorneys' Fees, Costs and an Incentive Award.

9           b.           The Claim Administrator shall cause the Print Publication Notice, to  
10 be published once per week for four successive weeks in the East Bay Times., beginning no later  
11 than 14 days after entry of this order of Preliminary Approval.

12           c.           Commencing on or before 14 days after entry of this order of  
13 Preliminary Approval, Safeway shall provide Catalina Coupon Notice using Safeway's Catalina  
14 coupon system at point of sale to all purchasers of Safeway Select Olive Oil, continuing for a  
15 period of 60 days.

16           d.           Commencing on or before 14 days after entry of this order of  
17 Preliminary Approval, the Claim Administrator shall provide additional online notice on  
18 websites and/or social media platforms chosen by the Claim Administrator and accessible to  
19 desktop and mobile users, so that overall notice of the Settlement (including the Online Notice,  
20 Print Publication Notice and the Catalina Coupon Notice) is reasonably calculated to apprise the  
21 Settlement Class Members of the Settlement.

22           11.       A Final Approval Hearing shall be held before this Court at 10:00 a.m. on  
23 March 16, 2018, Department 21 of the Superior Court for the State of California, County of  
24 Alameda, 1221 Fallon Street, Oakland, CA 94612, to address: (a) whether the proposed  
25 settlement should be finally approved as fair, reasonable and adequate, and whether the Final  
26 Approval Order should be entered, and (b) whether Class Counsel's application for attorneys'  
27 fees, costs, and a payment to the Class Representative should be approved.

28           12.       The Court approves, as to form and content, the Claim Form and the Notices,



1 substantially similar to the forms attached as Exhibits A and B1 to B4 to the Settlement  
2 Agreement. The claim form and all the notices are written in plain English and are easy to  
3 comprehend. The Parties shall have discretion to jointly make non-material minor revisions to the  
4 claim form and Notices before emailing and publishing. Responsibility regarding settlement  
5 administration, including, but not limited to, notice and related procedures, shall be performed by  
6 the Claim Administrator, subject to the oversight of Plaintiff and this Court as described in the  
7 Settlement Agreement.

8           13. The Court finds that the Parties' plan for providing notice to the Settlement  
9 Class is reasonably calculated to provide notice to the Settlement Class of the pendency of the  
10 Litigation, certification of the Settlement Class, the terms of the Settlement Agreement, and the  
11 Final Approval hearing, and complies fully with the requirements of the California and United  
12 States Constitutions, Civil Code section 1781, Rule of Court 3.769, and any other applicable law.  
13 The Parties and the Claim Administrator shall comply with the notice plan as set forth in the  
14 Settlement Agreement.

15           14. Any member of the Settlement Class who desires to be excluded from the  
16 Settlement Class, and therefore not be bound by the terms of the Settlement Agreement, must  
17 submit a request for exclusion to the Claim Administrator, pursuant to the instructions set forth in  
18 the Long Form Notice. The request must be received by the Claim Administrator (not  
19 postmarked) no later than February 16, 2018. No one shall be permitted to exercise any exclusion  
20 rights on behalf of any other Person, whether as an agent or representative of another or  
21 otherwise, except upon proof of a legal power of attorney, conservatorship, trusteeship, or other  
22 legal authorization and no one may exclude other Persons within the Settlement Class as a group,  
23 class, or in the aggregate.

24           15. No later than March 2, 2018, the Claim Administrator shall prepare a list of the  
25 names of the Persons who, pursuant to the Class Notice described herein, have excluded  
26 themselves from the Settlement Class in a valid and timely manner, and Plaintiff's Counsel shall  
27 file that list with the Court. The Court retains jurisdiction to resolve any disputed exclusion  
28 requests.

1           16. Any member of the Settlement Class who elects to be excluded shall not receive  
2 any benefits of the settlement, shall not be bound by the terms of the Settlement Agreement, and  
3 shall have no standing to object to the settlement or intervene in the Litigation. If the settlement is  
4 granted final approval, all Settlement Class Members who do not timely submit a valid request  
5 for exclusion will be bound by the order of final approval and final judgment, and enjoined from  
6 bringing or prosecuting any action relating to the released claims.

7           17. Any Settlement Class Member who does not submit a valid and timely request  
8 for exclusion may submit an objection to the Settlement Agreement ("Objection"). The written  
9 objection may be submitted by mail, express mail, electronic transmission, or personal delivery,  
10 but to be timely, it must be delivered to the Claim Administrator (not just postmarked or sent)  
11 prior February 16, 2018. Each objection must include: (i) the case name *Kumar v. Safeway* and  
12 the case number RG 14726707; (ii) the name, address and telephone number of the objector; (iii)  
13 the name, address, and telephone number of all counsel (if any) who represent the objector,  
14 including any former or current counsel who may be entitled to compensation for any reason if  
15 the objection is successful, and legal and factual support for the right to such compensation; (iv)  
16 documents or testimony sufficient to establish membership in the Settlement Class; (v) a detailed  
17 statement of any objection asserted, including the grounds therefor; (vi) whether the objector is,  
18 and any reasons for, requesting the opportunity to appear and be heard at the final approval  
19 hearing; (vii) the identity of all counsel (if any) representing the objector who will appear at the  
20 final approval hearing and, if applicable, a list of all persons who will be called to testify in  
21 support of the objection; (viii) copies of any papers, briefs, or other documents upon which the  
22 objection is based; (ix) a detailed list of any other objections submitted by the Settlement Class  
23 Member, or his/her counsel, to any class actions submitted in any state or federal court in the  
24 United States in the previous five years (or affirmatively stating that no such prior objection has  
25 been made); and (x) the objector's signature, in addition to the signature of the objector's attorney  
26 (if any). Failure to include documents or testimony sufficient to establish membership in the  
27 Settlement Class shall be grounds for overruling and/or striking the objection on grounds that the  
28 objector lacks standing to make the objection. Failure to include any of the information or

1 documentation set forth in this paragraph also shall be grounds for overruling an objection.

2           18. Any Settlement Class Member shall have the right to appear and be heard at the  
3 Final Approval hearing, either personally or through an attorney retained at the Settlement Class  
4 Member's own expense. However, if the Settlement Class Member wishes to object to the  
5 Settlement at the Final Approval Hearing (either personally or through counsel), the Settlement  
6 Class Member must submit a written objection as set forth in the prior paragraph of this Order.

7           19. Immediately upon receipt of any objection, the Claim Administrator shall  
8 forward to the objection and all supporting documentation to counsel for the Parties. No later than  
9 February 16, 2018, Plaintiff's Counsel shall file all such objections and supporting documentation  
10 with the Court.

11           20. Plaintiff shall file her motions for Final Approval and for any award of  
12 attorneys' fees, costs and a class representative payment no later than February 2, 2018 and the  
13 reply in support of that motion and responses to any objections and requests to intervene no later  
14 than March 2, 2018. Those motions and all supporting documentation shall simultaneously be  
15 posted to the Settlement Website.

16           21. No later than March 2, 2018, the Claim Administrator shall provide a  
17 declaration to the Court regarding the number and dollar amount of claims received to date.

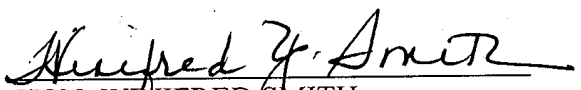
18           22. In the event that the proposed settlement is not finally approved by the Court, or  
19 in the event that the Settlement Agreement becomes null and void pursuant to its terms, this  
20 Preliminary Approval Order and all orders entered in connection herewith shall become null and  
21 void, shall be of no further force and effect, and shall not be used or referred to for any purposes  
22 whatsoever in this Litigation or in any other case or controversy; in such event the Settlement  
23 Agreement and all negotiations and proceedings directly related thereto shall be deemed to be  
24 without prejudice to the rights of any and all of the Parties, who shall be restored to their  
25 respective positions as of the date and time immediately preceding the execution of the  
26 Settlement Agreement.

27           23. This Order shall not be construed as an admission or concession by Defendant  
28 of the truth of any allegations made by the Plaintiff or of liability or fault of any kind.

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24. The Court may, for good cause, extend any of the deadlines set forth in this Order without further notice to the Settlement Class Members. The Final Approval Hearing may, from time to time and without further notice to the Settlement Class Members, be continued by Order of the Court.

IT IS SO ORDERED this 27 th day of OCT., 2017.

  
HON. WINIFRED SMITH  
SUPERIOR COURT JUDGE