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**United States District Court
Central District of California**

In re Trader Joe’s Tuna Litigation

Case № 2:16-cv-01371-ODW (AJWx)

**ORDER GRANTING RENEWED
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT [99]**

I. INTRODUCTION

Plaintiff Atzimba Reyes, on behalf of herself and others similarly situated, alleges that Defendants, Trader Joe’s Company and Trader Joe’s East, Inc. (collectively, “Defendants”), underfilled certain 5-ounce canned tuna products. Reyes, on behalf of the settlement class, and Defendants, on behalf of the suppliers of certain Trader Joe’s 5-ounce canned tuna products, reached a stipulated settlement. Reyes now renews her motion, without opposition, for preliminary approval of the class action settlement. (Renewed Mot. for Prelim. Approval of Class Action Settlement (“Mot.”), ECF No. 99.) For the reasons discussed below, the Court **GRANTS** the Motion.¹

¹ After carefully considering the papers filed in connection with the Motion, the Court deemed the matter appropriate for decision without oral argument. Fed. R. Civ. P. 78; C.D. Cal. L.R. 7-15.

1 **II. BACKGROUND**

2 The Court addressed the relevant background in its Order Denying Preliminary
3 Approval of Class Action Settlement Without Prejudice (“Order”) and incorporates that
4 discussion here by reference. (Order, ECF No. 96.) Plaintiff now renews her motion
5 requesting that the Court: “(1) Grant preliminary approval of the proposed Settlement;
6 (2) Provisionally certify the Settlement Class on a nationwide basis for the purposes of
7 preliminary approval, designate Plaintiff Reyes as the Class Representative, and Bursor
8 & Fisher, P.A. as Class Counsel for the Settlement Class; (3) Establish procedures for
9 giving notice to members of the Settlement Class; (4) Approve forms of notice to
10 Settlement Class Members; (5) Mandate procedures and deadlines for exclusion
11 requests and objections; and (6) Set a date, time and place for a final approval hearing.”
12 (Mot. at 3.)

13 **III. SETTLEMENT TERMS**

14 The parties executed a Stipulation for Class Action Settlement (“SS”) to reflect
15 the compromise reached. (See Declaration of L. Timothy Fisher (“Fisher Decl.”) Ex. 1
16 (“SS”), ECF No. 99-2.) The key provisions follow.

17 **A. Relevant Definitions**

18 The Stipulated Settlement defines the proposed settlement class as “[a]ll persons
19 in the United States who purchased Trader Joe’s Tuna . . . from January 5, 2012 through
20 the date on which class notice is disseminated.” (SS ¶ 1.20.) “Trader Joe’s Tuna” or
21 “Trader Joe’s Tuna Products” means “(i) 5-ounce canned Trader Joe’s Albacore Tuna
22 in Water Salt Added, (ii) 5-ounce canned Trader Joe’s Albacore Tuna in Water Half
23 Salt, (iii) 5-ounce canned Trader Joe’s Albacore Tuna in Water No Salt Added,
24 (iv) 5-ounce canned Trader Joe’s Albacore Tuna in Olive Oil Salt Added, (v) 5-ounce
25 canned Trader Joe’s Skipjack Tuna in Water With Sea Salt, and (vi) 5-ounce canned
26 Trader Joe’s Yellowfin Tuna in Olive Oil Solid Light, purchased during the Settlement
27 Class Period.” (SS ¶ 1.26.)
28

1 **B. Settlement Fund**

2 The Settlement provides that Defendants will pay \$1.3 million in cash as the
3 Settlement Fund, which is Defendants' total financial obligation. The Settlement Fund
4 will pay for valid claims of Settlement Class members; settlement administration costs
5 actually incurred, estimated to be \$357,953; check distribution costs; Attorneys' Fees
6 and Costs to Class Counsel, not to exceed one-third (1/3) of the total Settlement Fund;
7 and the Incentive Award, if any, to the Class Representative, not to exceed \$5000. (SS
8 ¶ 2.1.)

9 Each Settlement Class Member who submits a valid claim will receive a flat rate
10 cash award of \$29, subject to dilution or inflation depending on the total number of
11 claims submitted. (SS ¶¶ 2.3, 2.6, 2.8.) The Settlement provides that any funds from
12 checks remaining uncleared after 180 days from issuance shall be donated to a charity
13 agreed upon by Class Counsel, Defendants' Counsel, and the Settlement Administrator.
14 (SS ¶ 2.7.) The parties propose Feeding America as the *cy pres* recipient, a nationwide
15 network of 200 foodbanks that provides food to more than 46 million people through
16 60,000 food pantries and meal programs across America. (See Suppl. Br. 1, ECF
17 No. 103; Suppl. Fisher Decl. ¶ 2, ECF No. 103-1.)

18 A Settlement Class Member may submit a maximum of one claim on a
19 Court-approved Claim Form, either online or through the mail, regardless of the number
20 of Trader Joe's Tuna Products purchased. (SS ¶ 2.3.) No receipt is required; however,
21 a Settlement Class Member must confirm under penalty of perjury the specific product
22 purchased and that the purchase was made within the Settlement Class Period. (SS
23 ¶¶ 2.3, 2.4.) The parties estimate that 17,300 valid claims will exhaust the Settlement
24 Fund. (Mot. 12, 25; Fisher Decl. ¶ 13).

25 **C. Notice to Settlement Class**

26 The parties have selected KCC Class Action Services, LLC ("KCC"), as the
27 Settlement Administrator. (SS ¶ 1.19; Fisher Decl. ¶ 15.) KCC's proposed notice plan
28 includes a dedicated settlement website and toll-free phone number, an Internet banner

1 ad campaign, and print publication in *National Geographic*, the *New York Times*, and
2 the *Los Angeles Daily News* (the “Media Plan”). (Mot. 25; Decl. of Carla Peak (“Peak
3 Decl.”) ¶¶ 8–12, ECF No. 99-3.) This Media Plan is expected to reach approximately
4 70% of likely Settlement Class Members. (Mot. 25; Peak Decl. ¶¶ 13–14.)

5 The parties propose to distribute a short form and a long form class notice using
6 the above described Media Plan. (Mot. 22–25; Fisher Decl. ¶ 16, Exs. 5–6.) Both
7 notices inform potential Settlement Class Members that they may accept, object, or opt
8 out of the settlement. (Fisher Decl. Exs. 5–6.) The notices describe the procedures a
9 potential Settlement Class Member must follow for each action. (Fisher Decl. Exs. 5–
10 6.) A Settlement Class Member may submit a claim online or by mail; the claim form
11 will be available online at the Settlement Website or upon request in hard copy. (Fisher
12 Decl. Ex. 5, Ex. 6 at 4, Ex. 7 (“Claim Form”).) Settlement Class Members may opt-out
13 only by mailing a request for exclusion to a specified address with the requested
14 information. (See Fisher Decl. Ex. 6 at 5, Ex. 8 (“Exclusion Request Form”).) The
15 Exclusion Request Form will be available on the Settlement Website. (Fisher Decl.
16 Ex. 6 at 5.) The class notice also informs potential class members how to object to the
17 settlement or make an appearance. (See Fisher Decl. Exs. 5–6.) The Stipulated
18 Settlement will also be available on the Settlement Website, although the notice does
19 not indicate that the anticipated motion for fees and incentive award will be similarly
20 posted. (See Fisher Decl. Ex. 6 at 8–9.)

21 **D. Released Claims**

22 The Stipulated Settlement provides that Settlement Class Members who do not
23 opt-out will release all claims:

24 arising from the factual allegations and/or legal claims made in the Action,
25 or arising from similar or related allegations, claims, or causes of action,
26 including without limitation any allegations of false, misleading, or
27 deceptive advertising or violation of the Consumers Legal Remedies Act,
28 allegations of underfilling of Trader Joe’s Tuna and/or any allegations of
damages arising from the purchase of any Trader Joe’s Tuna at any time
on or after January 5, 2012 and prior to the time the Class is notified.

1 (SS ¶ 6.1.) Settlement Class Members “shall be deemed to have waived and
2 relinquished . . . [the] rights and benefits of California Civil Code section 1542” and
3 equivalent provisions under other state or federal law. (SS ¶ 6.1.)

4 IV. ANALYSIS

5 The Court first addresses whether the class may be provisionally certified for
6 settlement purposes, then evaluates the fairness, adequacy, and reasonableness of the
7 proposed settlement, and finally reviews the adequacy of the proposed notice.

8 A. Class Certification

9 Class certification is a prerequisite to preliminary settlement approval. Class
10 certification is appropriate only if each of the four requirements of Rule 23(a) and at
11 least one of the requirements of Rule 23(b) are met. *Amchem Prods., Inc. v. Windsor*,
12 521 U.S. 591, 614, 621 (1997). Under Rule 23(a), the plaintiff must show that: “(1) the
13 class is so numerous that joinder of all members is impracticable; (2) there are questions
14 of law and fact common to the class; (3) the claims or defenses of the representative
15 parties are typical of the claims or defenses of the class; and (4) the representative
16 parties will fairly and adequately protect the interests of the class.” Fed. R. Civ. P.
17 23(a). The Court previously found that the proposed class meets all four Rule 23(a)
18 factors and is aware of no new facts that alter that conclusion. (*See* Order 6–8.)

19 Next, the proposed class must meet at least one of the requirements of Rule 23(b).
20 Rule 23(b)(3) requires the Court to find “that the questions of law or fact common to
21 class members predominate over any questions affecting only individual members, and
22 that a class action is superior to other available methods for fairly and efficiently
23 adjudicating the controversy.” Fed. R. Civ. P. 23(b)(3). Where class certification is
24 sought for settlement purposes only, the certification inquiry still “demand[s] undiluted,
25 even heightened, attention.” *Amchem*, 521 U.S. at 620.

26 The Court previously denied preliminary approval because it did not find the
27 predominance requirement met. (*See* Order 8–10.) Reyes seeks provisional
28 certification of a nationwide class. (Mot. 11; SS ¶ 1.20.) The Ninth Circuit has stated

1 that “California law may only be used on a classwide basis if the interests of other states
2 are not found to outweigh California’s interest in having its law applied.” *Mazza v. Am.*
3 *Honda Motor Co.*, 666 F.3d 581, 590 (9th Cir. 2012) (internal quotation marks omitted).
4 In *Mazza*, the Ninth Circuit held that courts must conduct a “three-step governmental
5 interest test” before certifying a nationwide class applying California law. *Id.* The
6 Ninth Circuit applied *Mazza* in *In re Hyundai and Kia Fuel Economy Litig.* to vacate
7 the class certification in the settlement context where the district court did not analyze
8 the variations in state law. 881 F.3d 679, 702 (9th Cir. 2018), *vacated and remanded*
9 926 F.3d 539 (9th Cir. 2019). As Reyes had not addressed *Mazza* or the choice-of-law
10 analysis for nationwide claims in her initial motion, the Court did not find the
11 predominance requirement met. (Order 10.)

12 Shortly after the Court denied Reyes’s initial motion, the Ninth Circuit issued its
13 en banc opinion in *In re Hyundai*, 926 F.3d 539 (9th Cir. 2019) (en banc). There, the
14 Ninth Circuit clarified that, unless a proponent of foreign law demonstrates “that foreign
15 law, rather than California law, should apply to class claims,” “the district court may
16 properly find California law applicable without proceeding” through a choice of law
17 analysis. *Id.* at 561–62 (internal quotation marks omitted).² Here, no party challenges
18 that California law applies and therefore the *Mazza* choice of law analysis is not
19 required.

20 Predominance exists under Rule 23(b) when “common questions present a
21 significant aspect of the case and they can be resolved for all members of the class in a
22 single adjudication.” *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1022 (9th Cir. 1998).
23 Questions of law or fact common to class members in this case predominate over
24 individualized questions because the issues at stake, beginning with whether Trader
25 Joe’s Tuna Products were underfilled, are common to the class. Potential class members
26 “suffered the same harm in the same way because of the [defendants’] alleged conduct.”

27
28 ² Notably, the Ninth Circuit observed that *Mazza* concerned class certification in the litigation, not settlement, context. *Id.* at 563.

1 *In re Hyundai*, 926 F.3d at 559. Further, a class action appears to be a far superior
2 method of adjudicating the class members' claims. The overall claim that Defendants
3 underfilled cans of tuna makes individual actions prone to inefficiency; thousands of
4 individual actions would be inefficient, and if each potential class member were to go
5 it alone the costs of litigation for each plaintiff would dwarf any recovery. Accordingly,
6 the class meets the requirements of Rule 23(b)(3).

7 The requirements of Rule 23(a) and at least one of the requirements of Rule 23(b)
8 are met. As such, the class may be provisionally certified for settlement purposes.

9 **B. Fairness of Settlement Terms**

10 The Court next must consider whether the proposed settlement warrants
11 preliminary approval. For preliminary approval, "the court evaluates the terms of the
12 settlement to determine whether they are within a range of possible judicial approval."
13 *Spann v. J.C. Penney Corp.*, 314 F.R.D. 312, 319 (C.D. Cal. 2016) (internal quotation
14 marks omitted). A court may preliminarily approve a settlement and direct notice to
15 the class if the proposed settlement "appears to be the product of serious, informed, non-
16 collusive negotiations; has no obvious deficiencies; does not improperly grant
17 preferential treatment to class representatives or segments of the class; and falls within
18 the range of possible approval." *Id.* (internal numerals omitted); *In re Tableware*
19 *Antitrust Litig.*, 484 F. Supp. 2d 1078, 1079 (N.D. Cal. 2007). "It is the settlement taken
20 as a whole, rather than the individual component parts, that must be examined for
21 overall fairness." *Hanlon*, 150 F.3d at 1026. "The settlement must stand or fall in its
22 entirety"; a court may not "delete, modify or substitute" its provisions. *Id.*

23 The settlement negotiations appear fair and adequate and the proposed settlement
24 terms appear to come within the range of possible judicial approval.

25 **I. Adequacy of Negotiations**

26 The Court is satisfied that settlement was the product of "serious, informed, non-
27 collusive negotiations." *Spann*, 314 F.R.D. at 319. The parties thoroughly investigated
28 their claims, engaged in informal and formal discovery, and negotiated informally for

1 months before completing an in-person mediation, when they reached an agreement.
2 (*See* Mot. 21; SS ¶ BB.) Reyes asserts that the settlement “is the product of extended
3 arm’s-length negotiations between experienced attorneys familiar with the legal and
4 factual issues of this case.” (Mot. 3.) Under these circumstances, the Court accepts that
5 the negotiations were adequate.

6 **2. Settlement Terms**

7 After carefully reviewing the terms of the settlement, the Court finds that they do
8 not unfairly give preferential treatment to any party and fall within the range of possible
9 approval.

10 Assessing a settlement proposal requires the district court to balance a
11 number of factors: the strength of the plaintiffs’ case; the risk, expense,
12 complexity, and likely duration of further litigation; the risk of maintaining
13 class action status throughout the trial; the amount offered in settlement;
14 the extent of discovery completed and the stage of the proceedings; the
15 experience and views of counsel; the presence of a governmental
16 participant; and the reaction of the class members to the proposed
17 settlement.

16 *Hanlon*, 150 F.3d at 1026. “Ultimately, the district court’s determination is nothing
17 more than an amalgam of delicate balancing, gross approximations, and rough justice.”
18 *Nat’l Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 526 (C.D. Cal. 2004)
19 (internal quotation marks omitted). “The initial decision to approve or reject a
20 settlement proposal is committed to the sound discretion of the trial judge.” *Id.*

21 As with most class actions, there is risk to all parties in continuing towards trial.
22 The parties reached settlement only after thoroughly evaluating the strengths and risks
23 to both sides. (*See* Mot. 19–22.) Class Counsel endorses the Settlement as “provid[ing]
24 exceptional results for the Settlement Class while sparing the Settlement Class
25 Members from the uncertainties of continued and protracted litigation.” (Mot. 22.) The
26 Settlement treats all members of the class equally, awarding a flat rate of \$29 per claim,
27 subject to dilution or inflation based on total number of claims. Accordingly, the
28

1 Settlement does not unfairly favor any member, represents a compromise, and avoids
2 uncertainty for all parties involved.

3 Finally, the Court finds the parties' proposed *cy pres* recipient for unclaimed
4 funds, Feeding America, acceptable. Feeding America as a *cy pres* recipient accounts
5 for the nature of Reyes's lawsuit and the underlying statutes as Reyes and the class seek
6 to recover for the amount their tuna cans were underfilled. *See Naschin v. AOL, LLC*,
7 663 F.3d 1034, 1036, 1039–40 (9th Cir. 2011). Further, Feeding America is a
8 nationwide network of foodbanks, aligning with the nationwide class. *See id.*

9 **3. Settlement Funds**

10 The Court notes no obvious deficiencies in the amount and allocation of
11 settlement funds. However, the Court finds the estimated Administrator costs and
12 requested Class Counsel Fees concerning, although within the range of possible
13 approval at this preliminary stage.

14 KCC Class Action Services estimates Administrator costs and expenses to be
15 \$357,953. (SS ¶ 4.5; Fisher Decl. ¶ 15.) “Courts regularly award administrative costs
16 associated with providing notice to the class,” which must be reasonably incurred for
17 the benefit of the class. *Bellinghausen v. Tractor Supply Co.*, 306 F.R.D. 245, 266 (N.D.
18 Cal. 2015). Here, KCC's requested administrative costs appear high when compared to
19 other similar cases, with an estimated \$357,953 in administration costs from a \$1.3
20 million settlement fund (27.5% of the total fund) and an estimated 17,300 potential
21 claimants. *See Hendricks v. StarKist Co.*, No. 13-CV-00729-HSG, 2015 WL 4498083,
22 at *2, *9 (N.D. Cal. July 23, 2015) (approving administrator's costs capped at \$675,000
23 in underfilled canned tuna case involving \$12 million settlement with millions of
24 potential class members); *see also Shelby v. Two Jinns, Inc.*, No. CV-15-03794-AB-
25 GJSx, 2017 WL 6347090, at *11 (C.D. Cal. Aug. 2, 2017), *modified sub nom. Shelby*
26 *v. Two Jinn, Inc.*, 2018 WL 4191405 (C.D. Cal. June 25, 2018) (approving
27 administrative costs of \$45,000 where settlement was for \$457,000 with an initial
28 estimated 17,300 potential class members); *Grannan v. Alliant Law Grp., P.C.*,

1 No. C10-02803 HRL, 2012 WL 216522, at *11 (N.D. Cal. Jan. 24, 2012) (awarding
2 approximately \$121,000 in costs to claims administrator where settlement for \$1 million
3 included nearly 138,000 potential claimants). However, considering the extensive
4 Media Plan and need to reach a broad, nationwide audience, KCC’s estimated
5 Administrator costs may fall within the range of possible approval for preliminary
6 approval. **Plaintiff is advised that final approval will depend on adequate legal and**
7 **factual support for the requested award.**

8 The Settlement provides that Class Counsel will petition the Court for a Fee
9 Award not to exceed one-third of the Settlement Fund. (SS ¶ 3.1.) “While attorneys’
10 fees and costs may be awarded in a certified class action where so authorized by law or
11 the parties’ agreement . . . courts have an independent obligation to ensure that the
12 award, like the settlement itself, is reasonable, even if the parties have already agreed
13 to an amount.” *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 941 (9th Cir.
14 2011) (citation omitted). Twenty-five percent recovery is the benchmark for an award
15 of attorneys’ fees, although courts in the Ninth Circuit have found upward departures
16 within the acceptable range. *See id.* at 942 (noting 25% benchmark); *Powers v. Eichen*,
17 229 F.3d 1249, 1256–57 (9th Cir. 2000) (upward departure acceptable when expressly
18 explained). Further, “[w]here a settlement produces a common fund for the benefit of
19 the entire class, courts have discretion to employ either the lodestar method or the
20 percentage-of-recovery method.” *In re Bluetooth*, 654 F.3d at 942. Counsel is
21 experienced in class action litigation concerning underfilled canned tuna (*see* Fisher
22 Decl. Ex. 4 at 2, 7–8, 14) and the fee request, while high, falls within the range identified
23 as potentially acceptable in the Ninth Circuit. Accordingly, preliminary approval is
24 appropriate, though the Court notes that **final approval will depend on counsel**
25 **providing sufficient support for the requested award.**

26 **4. Release of Claims**

27 “Beyond the value of the settlement, potential recovery at trial, and inherent risks
28 in continued litigation, courts also consider whether a class action settlement contains

1 an overly broad release of liability.” *Spann*, 314 F.R.D. at 327; *see also Hesse v. Sprint*
2 *Corp.*, 598 F.3d 581, 590 (9th Cir. 2010) (“A settlement agreement may preclude a party
3 from bringing a related claim in the future even though the claim was not presented and
4 might not have been presentable in the class action, but only where the released claim
5 is based on the identical factual predicate as that underlying the claims in the settled
6 class action.”) (internal quotation marks omitted). The Settlement releases all claims
7 brought or that could have been brought based on the factual predicate in the action.
8 (See SS ¶ 6.1.) Thus, while the release is broad in that it releases claims both known
9 and unknown, the released claims are appropriately limited to the factual predicate here.

10 **C. Sufficiency of Notice**

11 The Court finds both the type and content of the proposed notice to potential class
12 members sufficient.

13 ***1. Type of Notice***

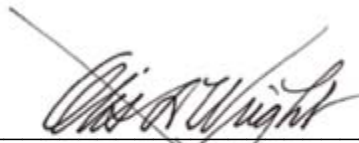
14 “[T]he court must direct to class members the best notice that is practicable under
15 the circumstances, including individual notice to all members who can be identified
16 through reasonable effort.” Fed. R. Civ. P. 23(c)(2)(B). For class action settlements,
17 “[t]he court must direct notice in a reasonable manner to all class members who would
18 be bound by the proposal.” Fed. R. Civ. P. 23(e)(1)(B). The parties agree that the
19 Administrator will distribute a long and short form notice to potential class members
20 pursuant to the Media Plan, which includes a dedicated settlement website, toll-free
21 phone number, an Internet banner ad campaign, and print publications in *National*
22 *Geographic*, the *New York Times*, and the *Los Angeles Daily News*. (Mot. 25; SS ¶ 4.5.)
23 This Media Plan is expected to reach approximately 70% of likely Settlement Class
24 Members, according to KCC. (See Peak Decl. ¶¶ 13–14.) Additionally, potential class
25 members will have an opportunity to review the Settlement either on the Settlement
26 website or through the Court’s records. (See Fisher Decl. Ex. 5, Ex. 6 at 8–9.) The
27 Court finds the procedures for notice sufficient and the most practicable under the
28 circumstances.

1 the proposed Class Action Settlement; (2) provisionally certifies the Settlement Class,
2 as defined in the Settlement, for settlement purposes, designates Plaintiff Reyes as the
3 Class Representative, and Bursor & Fisher, P.A. as Class Counsel for the Settlement
4 Class; (3) approves the procedures for giving notice to members of the Settlement Class
5 as set forth in the Settlement and Media Plan; (5) appoints KCC Class Action Services
6 as Settlement Administrator; and (6) approves the forms of notice, exclusion, and claim
7 submission.

8 The parties shall confer and jointly submit to the Court for approval, **no later**
9 **than fourteen days after the date of this Order**, a proposed final approval hearing
10 date and schedule of all related dates of performance.

11
12 **IT IS SO ORDERED.**

13
14 January 14, 2020

15
16 

17 **OTIS D. WRIGHT, II**
18 **UNITED STATES DISTRICT JUDGE**