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on behalf of himself and others similarly situated

13 SUPERIOR COURT OF THE STATE OF CALIFORNIA

14 FOR THE COUNTY OF LOS ANGELES

15 LARRY TRAN, ROBERTO MORAN, and
16 OSIE MARSHALL, on behalf of themselves
and all others similarly situated,

17 Plaintiffs,

18 v.

19 GOOD HEALTH NATURAL PRODUCTS,
20 INC., a Delaware corporation,

21 Defendant.

Case Nos. BC561427; BC588986 (related)

*Assigned for all purposes to the
Hon. Daniel J. Buckley, Dept. 1*

CLASS ACTION

22 ~~SP/~~ [REVISED PROPOSED] ORDER
GRANTING PRELIMINARY
23 APPROVAL OF CLASS ACTION
SETTLEMENT AND DIRECTING
DISSEMINATION OF CLASS NOTICE

Hearing Date: March 7, 2019

Time: 9:00 a.m.

Dept.: 1

24 This matter having been brought before the Court on the motion of LARRY TRAN,
25 ROBERTO MORAN, and OSIE MARSHALL (collectively, "Plaintiffs" or "Named Plaintiffs"),
26 through their attorneys, pursuant to California Rule of Court 3.769 and other applicable rules and
27 laws, to request an Order granting preliminary approval of a class action settlement and directing the
28 dissemination of notice to the class (the "Order"); the Court having reviewed the Plaintiffs'

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Superior Court of California
County of Los Angeles

MAR 07 2019

Sherri R. Carter, Executive Officer/Clerk

By: Stephanie Chung, Deputy

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LOS ANGELES SUPERIOR COURT

FEB 11 2019

S. DREW

1 submissions, having held hearings on October 1, 2018 and March 7, 2019, and having found that
2 Plaintiffs are entitled to the relief they seek in this motion, and for good cause shown:

3 IT IS HEREBY ORDERED that Plaintiffs' motion is GRANTED, and it is further
4 ORDERED as follows:

5 1. The proposed Amended Stipulation of Class Action Settlement (the "Settlement
6 Agreement") is preliminarily approved as being within the range of potential final approval.

7 2. The Settlement Agreement, including the definitions contained therein, is
8 incorporated by reference into, and is a part of, this Preliminary Approval Order. All capitalized
9 terms used herein shall have the same meanings as set forth in the Settlement Agreement unless set
10 forth differently herein.

11 3. Based upon the submissions to the Court and attachments and exhibits thereto, the
12 Court conditionally makes the following findings solely for settlement purposes only, subject to final
13 approval at the Final Approval Hearing:

14 a. The members of the Settlement Class are so numerous as to make joinder
15 impracticable;

16 b. There are questions of law and fact common to the Settlement Class, and such
17 questions predominate over any questions affecting only individual Settlement Class Members;

18 c. The Named Plaintiffs' claims and the defenses thereto are typical of the claims of the
19 Settlement Class Members and the defenses thereto;

20 d. The Named Plaintiffs and Class Counsel can protect and have fairly and adequately
21 protected the interests of the Settlement Class Members; and

22 e. A class action is superior to all other available methods for fairly and efficiently
23 resolving the matter and provides substantial benefits to the Settlement Class Members.

24 4. Accordingly, solely for purposes of this settlement only, the Court preliminarily
25 approves the Named Plaintiffs as representatives of the Settlement Class, and conditionally certifies
26 a Settlement Class defined as follows:

1 All persons who, for personal or household use, purchased the Products¹ in the United States
2 from September 6, 2010 through and including the date of the Preliminary Approval Order.
3 Excluded from the Settlement Class are: (a) all Persons who purchased or acquired the Products for
4 resale; (b) Good Health® and its employees, principals, affiliated entities, legal representatives,
5 successors, and assigns; (c) any Person who files a valid, timely Request for Exclusion; (d) federal,
6 state, and local governments (including all agencies and subdivisions thereof, but excluding
7 employees thereof); and (e) the judge(s) to whom the Good Health® Actions are assigned, and any
8 members of their immediate families.

9 5. This matter is conditionally certified as a class action solely for settlement purposes
10 only under California Code of Civil Procedure Section 382, California Civil Code Section 1781, and
11 California Rules of Court, Chapter 6, Rules 3.767 *et seq.*, and/or other laws as applicable. If the
12 settlement does not receive final approval, Good Health retains the right to assert that the Good
13 Health® Action(s) may not be certified as a class action for any purpose.

14 6. Solely for purposes of implementing the Settlement Agreement and for purposes of
15 settlement, the Court preliminarily appoints CounselOne, P.C. and Chant & Company A
16 Professional Law Corporation as Class Counsel.

17 7. The Court finds that the Settlement Agreement falls within the range of possible
18 approval such that it warrants notice thereof and further orders notice of the settlement to be
19 disseminated to the Settlement Class Members in the manner set forth in the Settlement Agreement
20 and herein.

21 8. The Court hereby approves the appointment of Atticus Administration, LLC as the
22 Claims Administrator for purposes of disseminating the revised Long-Form/Publication Class
23

24 ¹ Product(s) means any and all products Labeled, manufactured, processed, distributed, marketed, advertised, promoted,
25 or sold by Good Health®: (1) containing the words or phrases "Good Health;" "Good Health®;" "natural;" "all natural;"
26 "100% natural;" "healthy;" "wholesome;" "nutritious;" "whole wheat;" "% Less Fat;" (2) containing any other
27 derivation of the words or phrases set forth in this paragraph; (3) containing any words or phrases to convey the same or
28 similar meanings as those set forth in this paragraph; (4) containing "We guarantee to use only natural, wholesome and
nutritious ingredients in each and every Good Health Natural Foods products", including, without limitation, all flavors,
varieties and sizes of the products identified as Apple Chips, Humbles Baked Hummus Chips, Bistro Chips, Eat Your
Vegetables, Enjoy Being Good Potato Chips, Enjoy Being Good Veggie Snacks (Chips and Straws), Harmonies
Multigrain Chips, Multigrain Chips, Popcorn, Popped Crisps, Potato Chips, Pretzels (including Peanut Butter, Gluten-
Free, Organic Whole Wheat Sprouted, and Veggie), Solea Polenta Chips, Sweet Potato Chips, Tortilla Chips, Vegetable
(Veggie) Chips, Vegetable (Veggie) Rings, Vegetable (Veggie) Stix, and Vegetable (Veggie) Straws.

1 Notices and the Claim Form, submitted to the Court, which are hereby approved, and for purposes of
2 administering the terms of the settlement as set forth in the Settlement Agreement.

3 9. By no later than sixty (60) days after the Preliminary Approval Order ("Notice
4 Date"), the Claims Administrator shall commence disseminating the Claim Form and Class Notice
5 pursuant to the notice plan in the Settlement Agreement.

6 10. To receive an Award, Settlement Class Members must submit valid Claim Forms
7 either online or via mail postmarked no later than one hundred twenty (120) days after the Notice
8 Date ("Claims Deadline").

9 11. Any Settlement Class Member may object to the fairness, reasonableness, or
10 adequacy of the proposed settlement. Each Settlement Class Member who wants to object to any
11 term of this settlement must do so in accordance with the terms of the Settlement Agreement. Any
12 such objection must be signed by the Settlement Class Member and submitted to the Claims
13 Administrator no later than sixty (60) days after the Notice Date (the "Objection Deadline"). Any
14 such objection must include all of the information set forth in the Long-Form/Publication Class
15 Notice including: (1) The name, address, telephone number, and, if available, the email address of
16 the Person objecting, and if represented by counsel, of his/her counsel; (2) Specify in writing, all
17 objections; (3) Whether he/she intends to appear at the Final Approval Hearing, either with or
18 without counsel; (4) A statement of his/her membership in the Settlement Class, including all
19 information required by the Claim Form; and (5) A detailed list of any other objections submitted by
20 the Settlement Class Member, or his/her counsel, to any class actions submitted in any court,
21 whether state or otherwise, in the United States in the previous five (5) years. If the Settlement Class
22 Member or his/her counsel has not objected to any other class action settlement in any court in the
23 United States in the previous five (5) years, he/she shall affirmatively state so in the written
24 materials provided in connection with the objection to this settlement. Any attorney hired by a
25 Settlement Class Member for the purpose of objecting to any aspect of the settlement will be at the
26 Settlement Class Member's sole expense. Any objection that fails to satisfy the above requirements,
27 or that is not properly and timely submitted, shall be deemed ineffective, will be disregarded by the
28 Court (absent further order), shall be deemed to have been waived, and the Settlement Class Member

1 asserting such objection shall be bound by the final determination of the Court and shall be
2 foreclosed from seeking any adjudication or review of this settlement by appeal or otherwise.

3 12. Any person included within the definition of the Settlement Class who wants to be
4 excluded from the Settlement Class must do so in writing by mailing a written request for exclusion
5 from the settlement to the Claims Administrator at the address set forth in the Long-
6 Form/Publication Class Notice. Such requests must be postmarked no later than sixty (60) days after
7 the Notice Date (the "Opt-Out Deadline"). The request must: (a) state the name and case number of
8 the Good Health® Actions, i.e., "*Tran, et al. v. Good Health Natural Products, Inc.*, Superior Court
9 of the State of California for the County of Los Angeles, Case Nos. BC561427; BC588986"; (b)
10 include the Settlement Class Member's full name, address, email address and telephone number; (c)
11 be signed by the Settlement Class Member and state that he/she is a member of the Settlement Class;
12 (d) clearly express the Settlement Class Member's desire to be excluded (or to "opt out") from the
13 Settlement Class and that he/she does not want to participate in the settlement; and (e) if represented
14 by counsel, also include counsel's name, address, and telephone number. Any person within the
15 Settlement Class who wants to be excluded from the Settlement Class can opt out only for
16 himself/herself. No person may opt out for any other person or group of persons, nor can any person
17 within the Settlement Class authorize any other person to opt out on his/her behalf. Any request for
18 exclusion that fails to satisfy the above requirements, or that has not been timely sent, will be
19 deemed ineffective, and any person included within the Settlement Class who does not properly and
20 timely submit a request for exclusion shall not be deemed to have waived all rights to opt out and
21 shall be deemed a Settlement Class Member for all purposes.

22 13. The Court finds that the manner of dissemination and content of the Long-
23 Form/Publication Class Notice as specified in detail in the Settlement Agreement and this Order: (i)
24 is the best notice practicable under the circumstances; (ii) is reasonably calculated, under the
25 circumstances, to apprise Settlement Class Members of the pendency of the lawsuits and of their
26 right to object to or to exclude themselves from the proposed settlement; (iii) is reasonable and
27 constitutes due, adequate, and sufficient notice to all persons entitled to receive notice; and (iv) is in
28 full compliance with the United States Constitution, the California Constitution, California Rules of

1 Court, and the requirements of due process,. In accordance with the terms of the Settlement
2 Agreement, all costs incurred in connection with the preparation and dissemination of notices to the
3 Settlement Class shall not exceed \$176,000 and shall be paid from the Settlement Fund established
4 by Good Health in accordance with the terms of the settlement.

5 14. The Long-Form/Publication Class Notices and the Claim Form shall be posted on the
6 Settlement Website no later than ten (10) calendar days after the entry of the Preliminary Approval
7 Order and remain in operation until at least one hundred twenty (180) days after the Payment
8 Distribution Date. A copy of the Settlement Agreement shall be made available to the public through
9 the Settlement Website or by calling a toll-free number to be established by the Claims
10 Administrator.

11 15. The Court hereby directs the Claims Administrator to promptly establish a dedicated
12 toll-free telephone number that Settlement Class Members can call to obtain information regarding
13 the settlement, and in the event the settlement becomes final, to have the toll-free number remain in
14 operation until at least one hundred twenty (180) days after the Payment Distribution Date.

15 16. The Court hereby directs the Claims Administrator to furnish Class Counsel and
16 Defendant's Counsel with copies of any and all written requests for exclusion, objections, notices of
17 intention to appear or other written communication received from Settlement Class Members.

18 17. The Court further orders the Claims Administrator to provide the Opt-Out list to
19 Class Counsel and Defendant's Counsel no later than five (5) business days after the completion of
20 the Opt-Out Deadline.

21 18. A final hearing (the "Final Approval Hearing") shall be held before this Court on
22 Jan 14, 2019 at 9:00 a.m./p.m., to determine whether: (a) the claims in the Good Health®
23 Actions meet each of the prerequisites for class certification for settlement purposes and may
24 properly be maintained as a class action on behalf of the Settlement Class for settlement purposes;
25 (b) the Court should finally approve the Settlement Agreement and all terms contained therein as
26 fair, reasonable, adequate, and in the best interests of the Settlement Class in light of any timely and
27 valid objections presented by Settlement Class Members and the parties' responses to any such
28 objections; (c) the Court should enter final judgment and order in accordance and consistent with the

1 terms of the Settlement Agreement; and (d) to approve the application for the Fee Award to Class
2 Counsel and the Incentive Awards to the Class Representatives in a manner consistent with the
3 Settlement Agreement. The Final Approval Hearing may be postponed, adjourned, or continued by
4 further Order of this Court, without further notice to the Settlement Class.

5 19. Class Counsel shall file and serve papers in support of final approval of the
6 settlement, including the provision for payment of the Fee Award and the Incentive Awards, no later
7 than sixteen (16) court days in advance of the Final Approval Hearing.

8 20. If the Court ultimately grants final approval of the settlement, the Court shall enter a
9 Final Judgment and Order Approving Settlement that will:

10 a. Confirm the final certification, for settlement purposes only, of the Settlement
11 Class;

12 b. Confirm the compliance of the Settlement Class with the applicable
13 requirements of Code of Civil Procedure section 382, including confirmation of the adequacy of the
14 representation of the Class Representatives as representatives of the Settlement Class;

15 c. Confirm that the notice program complied in all respects with the
16 requirements of due process and Code of Civil Procedure Section 382 by providing due, adequate,
17 and sufficient notice to the Settlement Class;

18 d. Determine that the Settlement Agreement is entered into in good faith, is
19 reasonable, fair, and adequate, and is in the best interests of the Settlement Class;

20 e. Enter final judgment on the settlement, with each side to bear its own fees and
21 costs except as otherwise specifically provided in the Settlement Agreement and the Court's final
22 approval order setting forth the attorneys' fees, expenses, and the incentives awards to be paid by the
23 Claims Administrator from the Settlement Fund under the terms of the settlement;

24 f. Enter judgment on the settlement, releasing all Released Parties from all
25 Released Claims pursuant to the terms of the Settlement Agreement;

26 g. Bar and enjoin all Releasing Parties from asserting and/or pursuing against
27 any Released Party any Released Claim; and
28

1 h. Retain the Court's continuing and exclusive jurisdiction over the Parties to the
2 Settlement Agreement, including all Settlement Class Members, to construe and enforce the
3 Settlement Agreement and the Court's judgment thereon in accordance with its terms for the mutual
4 benefit of the parties.

5 21. By this Order, all Settlement Class Members, unless and until they have timely
6 excluded themselves from the Settlement Class in accordance with the procedures set forth in this
7 Order, are hereby enjoined (i) from filing, commencing, prosecuting, intervening in or participating
8 as plaintiff, claimant, or class member in any other lawsuit or administrative, regulatory, arbitration
9 or other proceeding in any jurisdiction based on, arising out of, or concerning, any of the claims and
10 causes of action or the facts and circumstances giving rise to the Consolidated Class Action
11 Complaint and/or the Released Claims; (ii) from filing, commencing or prosecuting a lawsuit (other
12 than the instant lawsuit) or administrative, regulatory, arbitration or other proceeding as a class
13 action on behalf of any Settlement Class Members who have not timely excluded themselves
14 (including by seeking to amend a pending complaint to include class allegations or seeking class
15 certification in a pending action), based on, arising out of, or concerning, any of the claims and
16 causes of action or the facts and circumstances giving rise to the Consolidated Class Action
17 Complaint and/or the Released Claims; and (iii) from attempting to solicit other Settlement Class
18 Members from excluding themselves from this settlement, except that Plaintiffs' right or ability to
19 prosecute or participate in the instant action shall remain intact per the terms of the Settlement
20 Agreement (but, except for proceedings concerning the settlement process and settlement approval,
21 the instant action shall be stayed in its entirety as set forth in paragraph 21 below).

22 22. Except for proceedings concerning the settlement process and settlement approval,
23 the *Tran* Action, the *Moran/Marshall* Action and the Consolidated Action are each stayed in their
24 entirety.

25 23. The Court adopts the following schedule of events to effectuate the settlement of this
26 action:
27
28

Event	Deadline
Notice Date	No later than <u>May 6, 2019</u> (which is 60 days assuming the Court grants preliminary approval on the date of the hearing)
Deadline for submitting Claim Forms	No later than <u>Nov. 2, 2019</u> which is 180 days after the Notice Date)
Deadline for requesting exclusion from the Settlement Class	No later than <u>July 5, 2019</u> which is 60 days after the Notice Date)
Deadline for objecting to the Settlement Agreement or serving notice of appearance at Fairness Hearing	No later than <u>July 5, 2018</u> (which is 60 days after the Notice Date)
Deadline for Claims Administrator to file Affidavit regarding compliance with Notice Plan	<u>Dec. 18, 2019</u> (which is 16 court days before the Final Approval Hearing)
Deadline for filing Motion for Final Approval of the Settlement Agreement	<u>Dec. 18, 2019</u> (which is 16 court days before the Final Approval Hearing)
Final Approval Hearing (Motions for Final Approval and Attorneys' Fees, Expenses, and Incentive Payments)	<u>Jan. 14</u> , ² 2018 , at <u>9:00</u> a.m./ p.m.

IT IS SO ORDERED.

Dated: Mar 7, 2019

Daniel J. Buckley
Hon. Daniel J. Buckley
Judge of the Superior Court