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 individually and on behalf of all others similarly situated
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13 **UNITED STATES DISTRICT COURT**
 14 **FOR THE EASTERN DISTRICT OF CALIFORNIA**

15
 16 DOLORES OWENS, individually and on
 behalf of all others similarly situated,

17 Plaintiff,

18 vs.

19 KRAFT FOODS GLOBAL, INC., doing
 20 business as KRAFT FOODS, INC. and
 DOES 1-10 inclusive,

21 Defendants.
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Case No.: 1:10-CV-02062-AWI-SMS

Honorable Anthony W. Ishii

CLASS ACTION

**ORDER GRANTING PRELIMINARY
 APPROVAL OF SETTLEMENT**

Date: March 11, 2013

Time: 1:30 p.m.

Courtroom 2

Eighth Floor

1 The Court, having fully reviewed the Motion for Preliminary Approval of Class Action
2 Settlement, the Stipulation of Settlement of Class Action Claims (“Agreement”), and Exhibits
3 in support thereof, and having carefully reviewed the Agreement and the proposed Notice
4 of Pendency of Class Action and Proposed Settlement, and in recognition of the Court’s duty
5 to make a preliminary determination as to the reasonableness of any proposed Class Action
6 settlement, and if preliminarily determined to be reasonable, to provide notice to Class
7 Members in accordance with due process requirements, and to schedule a formal Final
8 Settlement Hearing to determine the good faith, fairness, adequacy and reasonableness of
9 any proposed settlement;

10 HEREBY MAKES THE FOLLOWING DETERMINATIONS AND ORDERS:

11 This action was originally filed in Fresno County Superior Court (Case No.
12 10CECG03379 on September 22, 2010, and removed to the United States District Court,
13 Eastern District on or about November 5, 2010. Plaintiff filed the action on behalf of a class
14 of current and former Cultured Packaging Technicians and Filler Operators employed at
15 Defendant’s Tulare and Fresno (South Orange Ave.) facilities at any time between
16 September 22, 2006 through the current period (the date through which this Court grants
17 preliminary approval of the settlement reached by the parties). The complaint alleges that
18 Defendant’s meal and rest break policies violated California law, class members did not
19 receive 30 minute duty-free meal periods and, as a result, class members were not paid for
20 all hours worked which, in turn, entitles class members to additional (overtime) pay and, as
21 a result, Defendant failed to provide accurate itemized statements (pay stubs) to class
22 members.

23 After thorough investigation into the facts of the action, including discovery and
24 informal exchange of information, the parties successfully mediated the case before Alan
25 Berkowitz of Judicate West.

26 The Parties propose the putative class be defined as follows: all persons who were
27 employed in Covered Positions during the Covered Time Frame, excluding those persons
28 who have previously adjudicated or released the Released Claims. (Covered Positions and

1 Covered Time Frame Cultured Packaging Technicians at the Tulare facility and at the
2 Fresno (South Orange Ave.) facility, Filler Operators who previously worked, or currently
3 work on the Capri Production line, and Filler Operators who previously worked or currently
4 work on the Kool Aid Burst production line at any time between September 22, 2006 through
5 the date of preliminary approval of the Settlement by the Court.

6 The Court finds on a preliminary basis that the Agreement filed with, incorporated
7 herein by this reference and made a part of this Preliminary Approval Order, appears to be
8 within the range of reasonableness of a settlement which could ultimately be given final
9 approval by this Court. It further appears to the Court on a preliminary basis, that the
10 settlement amount is fair and reasonable to Class Members when balanced against the
11 probable outcome of further litigation relating to the propriety of class certification, the
12 ultimate trial on liability and damages issues, and the potential appeals of rulings.

13 It further appears that significant discovery, investigation, research, and litigation has
14 been conducted such that counsel for the parties at this time are able to reasonably evaluate
15 their respective positions. It further appears that settlement at this time will avoid substantial
16 costs, delay and risks that would be presented by the further prosecution of the litigation.
17 It further appears that the proposed Settlement has been reached as the result of intensive,
18 serious and non-collusive negotiations between the parties, including mediation with a
19 neutral third party.

20 It further appears that Plaintiff Dolores Owens is a suitable class representative, was
21 employed by Defendant in a Covered Position during the Class Period, has representative
22 claims, and no conflict with the Class exists;

23 ACCORDINGLY, GOOD CAUSE APPEARING, THE MOTION FOR PRELIMINARY
24 APPROVAL IS HEREBY GRANTED, WESTRUP KLICK, LLP AND MICHAEL L. CARVER,
25 LABOR LAW OFFICE, A.P.C. ARE CONFIRMED AS CLASS COUNSEL, AND PLAINTIFF
26 DOLORES OWENS IS DEEMED CLASS REPRESENTATIVE;

27 Consistent with the definitions provided in the Agreement, the term "Putative Class
28 Members" includes all persons who were employed as Cultured Packaging Technicians at

1 the Tulare facility and at the Fresno (South Orange Ave.) facility, Filler Operators who
2 previously worked, or currently work on the Capri Production line, and Filler Operators who
3 previously worked or currently work on the Kool Aid Burst production line at any time
4 between September 22, 2006 through the date of preliminary approval of the Settlement by
5 the Court and who have not previously adjudicated or released the Release Claims as that
6 term is defined in the Agreement. The Settlement Class and Settlement Class Members
7 means all Putative Class Members who do not request exclusion from the Settlement within
8 the parameters of the Agreement. Further, the Court finds that the proposed Settlement
9 Administrator, CPT Group, Inc., is an adequate claims administrator, and the proposed
10 Notice of Pendency of Class Action and Proposed Settlement ("Class Notice"), which
11 advises the Putative Class Members of the Preliminary Approval of the Settlement, the
12 timing and procedures for filing a claim, and the date of the Final Settlement Hearing, in the
13 form attached to the Agreement as Exhibit A and incorporated herein by this reference and
14 made a part of this Preliminary Approval Order, fairly and adequately advises Putative Class
15 Members of the terms of the proposed Settlement and the benefits available to Putative
16 Class Members and of the formal Final Settlement Hearing to be conducted on July 29,
17 2013 at 1:30 p.m. and the right of Putative Class Members to file documentation in support
18 of or in opposition to the Settlement, and procedures for appearing at said hearing; the Court
19 further finds that said Notice clearly comports with all constitutional requirements, including
20 those of due process; the Court further finds that the proposed Class Notice is reasonable,
21 appropriate and adequate and will likely assist Putative Class Members in the claims
22 process. With regard to the proposed Claim Form, the Court finds that Claim Form
23 proposed is reasonable, appropriate and adequate and will likely assist Putative Class
24 Members in making their claims.

25 ACCORDINGLY, GOOD CAUSE APPEARING, THE COURT HEREBY APPROVES
26 THE PROPOSED CLAIMS ADMINISTRATION PROCESS, THE PROPOSED NOTICE OF
27 CLASS ACTION AND PROPOSED SETTLEMENT, AND THE CLAIM FORM, AS
28 INDICATED ABOVE.

1 The mailing to the present or last known address of present and former employees
2 and an address update search for Putative Class Members, constitutes an effective method
3 of notifying Putative Class Members of their rights with respect to the Class Action and
4 Settlement;

5 ACCORDINGLY, IT IS HEREBY ORDERED THAT THE PROCEDURES SET
6 FORTH IN THE AGREEMENT AND THE FOLLOWING SCHEDULE BE ESTABLISHED
7 AND FOLLOWED, UNLESS MODIFIED BY THE COURT:

8 **Mailing of Notice and Claim Form:**

9 Within 45 days of Preliminary Approval

10 **Claims Deadline:**

11 80 days after mailing of the Notice and Claim Form

12 **Exclusion Deadline:**

13 80 days after mailing of the Notice and Claim Form

14 **Objection Deadline:**

15 80 days after mailing of the Notice and Claim Form

16 **Plaintiff to File Motion for Final Approval:**

17 5 Court days before Final Approval Hearing

18 **Final Approval Hearing:**

19 Approximately 135 calendar days after Preliminary Approval

20 **Disbursement of Funds:**

21 Disbursement of funds will be made in accordance with the terms of the Agreement.

22 IT IS FURTHER ORDERED that no person, except Class Counsel and Counsel for
23 Defendant, shall be heard in opposition to the Court's determination of the good faith,
24 fairness, reasonableness and adequacy of the proposed Settlement, the requested
25 attorneys' fees and litigation expenses, the proposed Class Representative Enhancement
26 and/or any Order of Dismissal with Prejudice and Final Judgment regarding such
27 Settlement, unless such person has complied with the conditions set forth in the Notice of
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1 Pendency of Class Action and Proposed Settlement, which conditions are incorporated
2 herein;


3 IT IS FURTHER ORDERED all briefs supporting or opposing the Settlement shall be
4 served and filed at least five (5) Court days before the Final Approval Hearing;

5 IT IS FURTHER ORDERED that if for any reason the Court does not execute and file
6 an Order of Dismissal with Prejudice and Final Judgment, or if the "Effective Date" of
7 Settlement, as defined in the Agreement, does not occur for any reason whatsoever, the
8 proposed Agreement, and all evidence and proceedings had in connection therewith, shall
9 be without prejudice to the status quo and the rights of the parties to the litigation as more
10 specifically set forth in the Agreement;

11 IT IS FURTHER ORDERED that the Final Approval Hearing shall be held before the
12 undersigned at 1:30 p.m. on July 29, 2013 at the United States District Court, Eastern
13 District of California, Courtroom 2, 8th floor, to consider the fairness, adequacy and
14 reasonableness of the proposed Settlement, preliminarily approved by this Preliminary
15 Approval Order, and to consider the application of Class Counsel, for an award of
16 reasonable attorneys' fees, costs and expenses incurred, and the request for Class
17 Representative Service Fees for Plaintiff Dolores Owens.

18 IT IS SO ORDERED.

19 Dated: March 15, 2013



20 SENIOR DISTRICT JUDGE

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