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11 **UNITED STATES DISTRICT COURT**  
 12 **NORTHERN DISTRICT OF CALIFORNIA**  
 13 **SAN FRANCISCO DIVISION**

15 DAVID M. CATHCART, JAMES H.  
 16 WHITEHEAD, ROBERT W. DECKER,  
 DALE BALDISSERI, individually, and  
 17 on behalf of all others similarly situated,

18 Plaintiff,

19 v.

20 SARA LEE CORPORATION, SARA  
 21 LEE BAKERY GROUP,  
 22 EARTHGRAINS BAKING  
 COMPANIES, INC. (formerly sued as  
 23 DOE 1) and DOES 2 through 20,

24 Defendants.

Case No. CV 09-5748 MMC

**~~PROPOSED~~ ORDER (1)  
 CONFIRMING CERTIFICATION  
 OF CLASS AND COLLECTIVE  
 ACTION FOR SETTLEMENT  
 PURPOSES; (2) GRANTING FINAL  
 APPROVAL OF CLASS ACTION  
 SETTLEMENT; AND (3)  
 ENTERING FINAL JUDGMENT**

1           On December 14, 2012, this matter came on for hearing upon the Plaintiffs’ unopposed  
2 motion for final approval of the settlement in this action. Due and adequate notice having been  
3 given to the Settlement Class (as defined below), and the Court having considered all papers  
4 filed and proceedings had herein and all oral and written comments received regarding the  
5 proposed settlement, and having reviewed the record in the above captioned matter, and good  
6 cause appearing,

7           IT IS HEREBY ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

- 8           a.       The Court has jurisdiction over the subject matter of the above-captioned  
9 action, the Class Representatives, Defendants Sara Lee Corporation, Sara  
10 Lee Bakery Group, and Earthgrains Baking Companies, Inc.  
11 (“Defendants”) and all members of the Settlement Class, which consists of  
12 all individuals employed by Defendant Earthgrains Baking Companies,  
13 Inc. (“Earthgrains”) or alleged to be employed by the other Defendants in  
14 the position of “Route Sales Representative or” “Driver Salesman” – as  
15 defined in the two collective bargaining agreements that have been  
16 addressed in this action – for at least one day between December 8, 2005  
17 and August 10, 2012, the entry date of the Preliminary Approval Order  
18 (collectively the “Settlement Classes” or “Settlement Class Members”).
- 19           b.       The term Stipulation shall refer to the Joint Stipulation of Class Settlement  
20 and Release filed by the parties in this case in connection with their  
21 application for preliminary approval and final approval of this matter, and  
22 all terms herein shall have the same meaning as terms defined in the  
23 Stipulation, unless specifically provided herein.
- 24           c.       The Court grants final approval of the parties’ Settlement on the terms set  
25 forth in the Stipulation.
- 26           d.       The Court finds that the distribution by first-class mail of the Notice of (1)  
27 Proposed Class Settlement and (2) Final Settlement Approval Hearing  
28 (“Class Notice”) and Claim Form constituted the best notice practicable

1 under the circumstances to all persons within the definition of the  
2 Settlement Class and fully met the requirements of due process under the  
3 United States Constitution and applicable state law. Based on evidence  
4 and other material submitted in conjunction with the Final Settlement  
5 Approval Hearing, the actual notice to the Settlement Class was adequate  
6 and ample efforts were made to contact Settlement Class members to  
7 allow them to participate. These papers informed Class Members of the  
8 terms of the Settlement, their right to claim a share of the settlement  
9 proceeds, their right to object to the Settlement, or to elect not to  
10 participate in the Settlement and pursue their own remedies, and their right  
11 to appear in person or by counsel at the Final Settlement Approval  
12 Hearing and be heard regarding approval of the Settlement. Adequate  
13 periods of time were provided by each of these procedures. No Settlement  
14 Class Members objected to the Settlement, and only two (2) individuals  
15 opted out of the Settlement.

16 e. The Court finds, for purposes of settlement only, that the Class satisfies  
17 the applicable standards for certification under Federal Rules 23(a) and  
18 23(b)(3). Accordingly, solely for purposes of effectuating this settlement,  
19 this Court has certified a class of all Settlement Class Members, as that  
20 term is defined above. Because the Rule 23 class is being certified here  
21 for settlement purposes only, the Court need not (and does not) address the  
22 manageability requirement of Rule 23(b)(3). *See Amchem Products, Inc.*  
23 *v. Windsor*, 521 U.S. 591 (1997).

24 f. The Court finds, for settlement purposes only, that the Settlement Class  
25 Members meet the requirements for collective action certification under  
26 Section 216(b) of the Fair Labor Standards Act.

27 g. The Court approves the settlement of the above-captioned action, and each  
28 of the releases and other terms set forth in the Stipulation, as fair, just,

1 reasonable and adequate as to the Settlement Class, the Class  
2 Representatives, and Defendants (collectively “Settling Parties”). The  
3 Settling Parties and the Settlement Administrator are directed to perform  
4 in accordance with the terms set forth in the Stipulation.

5 h. Except as to any individual claim of those persons who have validly and  
6 timely requested exclusion from the Class, namely:

7 1) A. Valerio associated with Employee ID No. 90009031; and

8 2) M. Hugais associated with Employee ID No. 90031063,

9 all of the claims asserted in the above-captioned matter are dismissed with  
10 prejudice as to the Class Representatives and the Settlement Class  
11 Members. The Settling Parties are to bear their own attorneys’ fees and  
12 costs, except as otherwise provided in the Stipulation.

13 i. By this Judgment, each Class Representative shall be deemed to have, and  
14 by operation of the Judgment shall have, fully, finally, and forever  
15 released and discharged Defendants and their past, present and future  
16 parents, subsidiaries (whether or not wholly-owned), joint ventures,  
17 affiliates (including each such affiliate’s past, present and future parents,  
18 subsidiaries and joint ventures), divisions and subdivisions, and each of  
19 such entities’ current and former officers, directors, employees, partners,  
20 shareholders, agents, insurers, successors, assigns, and legal  
21 representatives, all in their individual and corporate capacities,  
22 (collectively the “Released Parties”) from any and all claims, obligations,  
23 causes of action, actions, demands, rights, and liabilities of every kind,  
24 nature and description, whether known or unknown, whether anticipated  
25 or unanticipated, arising prior to the date that this Order becomes Final,  
26 including, but not limited to, those which: (a) were pled in the Action;  
27 and/or or (b) could have been pled and which are based on any of the  
28 following: (i) alleged failure to pay any type of overtime wages, (ii)

1 alleged failure to pay minimum wages, (iii) alleged failure to provide meal  
2 periods, (iv) alleged failure to provide itemized or accurate wage  
3 statements, (v) alleged failure to timely pay wages due, before or after the  
4 end of employment, (vi) any statutory, constitutional, regulatory,  
5 contractual or common law claims for wages, damages, litigation costs,  
6 unfair business practices, unfair competition (including, without  
7 limitation, claims arising under California Bus. & Prof. Code sections  
8 17200 *et seq.*); and (c) this release includes any and all of the following  
9 based on any of the matters released by the foregoing: penalties (including  
10 those arising under PAGA), liquidated damages, punitive damages,  
11 interest, attorneys' fees, litigation costs, restitution, and equitable relief  
12 (collectively "Class Representatives' Released Claims").

13 j. By this Judgment, each Settlement Class Member who has not validly and  
14 timely requested exclusion from the Settlement by opting out (including  
15 the Class Representatives and Claimants), shall be deemed to have, and by  
16 operation of the Judgment shall have, fully, finally, and forever released  
17 and discharged the Released Parties from any and all claims, obligations,  
18 causes of action, actions, demands, rights, and liabilities of every kind,  
19 nature and description, whether known or unknown, whether anticipated  
20 or unanticipated, arising prior to the deadline to opt-out of the settlement  
21 as stated in the Class Notice or October 31, 2012, whichever occurs first,  
22 which arise under state or local or regulation and: (a) were pled in the  
23 Action; and/or or (b) could have been pled and which are based on any of  
24 the following: (i) alleged failure to pay any type of overtime wages, (ii)  
25 alleged failure to pay minimum wages, (iii) alleged failure to provide meal  
26 periods, (iv) alleged failure to provide itemized or accurate wage  
27 statements, (v) alleged failure to timely pay wages due, before or after the  
28 end of employment, (vi) any statutory, constitutional, regulatory,

1 contractual or common law claims for wages, damages, litigation costs,  
2 unfair business practices, unfair competition (including, without  
3 limitation, claims arising under California Bus. & Prof. Code sections  
4 17200 *et seq.*); and (c) this release includes any and all of the following  
5 based on any of the matters released by the foregoing (a) and (b) above:  
6 penalties (including those arising under PAGA), liquidated damages,  
7 punitive damages, interest, attorneys' fees, litigation costs, restitution, and  
8 equitable relief (collectively "Participating Class Members' Released  
9 Claims").

10 k. By this Judgment, each and every Claimant (including the Class  
11 Representatives) shall be deemed to have, and by operation of the  
12 Judgment shall have, also fully, finally, and forever released and  
13 discharged the Released Parties from (in addition to the Participating Class  
14 Members' Released Claims) any and all claims, obligations, causes of  
15 action, actions, demands, rights, and liabilities, whether known or  
16 unknown, whether anticipated or unanticipated, arising prior to the date  
17 the Claimant signs his or her Claim Form that were asserted or could have  
18 been asserted in the action pursuant to the FLSA based any of the  
19 following: (i) alleged failure to pay wages, (ii) alleged failure to pay  
20 overtime wages, (iii) alleged failure to pay straight time wages, (iv)  
21 alleged failure to pay minimum wages, (v) meal periods, (vi) premium pay  
22 for meal periods and this release includes any and all of the following  
23 based on any of the matters provided for above in this paragraph:  
24 penalties, liquidated damages, punitive damages, interest, attorneys' fees,  
25 litigation costs, restitution, and equitable relief ("Claimants' Released  
26 Claims").

27 1. By this Judgment, Class Counsel hereby releases all claims, causes of  
28 action, demands, damages, costs, rights, and liabilities of every nature and

1 description for attorneys' fees, costs, and expenses against the Defendants  
2 and Released Parties arising on or before the date that the Final Approval  
3 Order becomes Final ("Class Counsel's Released Claims").

4 m. Neither the Stipulation nor the Settlement contained therein, nor any act  
5 performed or document executed pursuant to or in furtherance of the  
6 Stipulation or the Settlement: (i) is or may be deemed to be or may be  
7 used as an admission of, or evidence of, the validity of any of the released  
8 claims described above, any wrongdoing or liability of Defendants or any  
9 of the Released Parties, or whether class or collective action certification  
10 is warranted in this action or any other proceeding or that decertification is  
11 not warranted in this action or any other proceeding; or (ii) is or may be  
12 deemed to be or may be used as an admission of, or evidence of, any fault  
13 or omission of Defendants or any of the Released Parties in any civil,  
14 criminal or administrative proceeding in any court, administrative agency  
15 or other tribunal. Defendants may file the Judgment from the above-  
16 captioned matter in any other action that may be brought against them in  
17 order to support a defense or counterclaim based on principles of *res*  
18 *judicata*, collateral estoppel, release, good faith settlement, judgment bar  
19 or reduction or any theory of claim preclusion or issue preclusion or  
20 similar defense or counterclaim.

21 n. The Action is dismissed on the merits and with prejudice, permanently  
22 barring the Class Representatives and Settlement Class Members (other  
23 than those who timely filed valid written requests for exclusion from the  
24 Class) from prosecuting any of the Participating Class Members' Released  
25 Claims, also permanently barring the Class Representatives and Claimants  
26 from prosecuting any of the Claimants' Released Claims, also  
27 permanently barring the Class Representatives from prosecuting any of the  
28 Class Representatives' Released Claims, and also permanently barring

1 Class Counsel from prosecuting any of the Class Counsel's Released  
2 Claims.

3 o. The Court hereby orders the appointment of David M. Cathcart, James H.  
4 Whitehead, and Dale Baldisseri as Class Representatives for the  
5 Settlement Class for purposes of the Settlement. The Court is informed  
6 that named-plaintiff Robert W. Decker passed away on October 21, 2012,  
7 after preliminary approval, but prior to final approval of the Settlement.  
8 The Court hereby orders the appointment of Ira Spiro and Jennifer Connor  
9 of Spiro Moore LLP and Joseph Gigliotti of Gigliotti & Gigliotti LLP as  
10 Class Counsel for the Settlement Class for purposes of Settlement and the  
11 releases and other obligations therein.

12 p. The Court finds that the plan of allocation set forth in the Stipulation is  
13 fair and reasonable and that distribution of the Settlement Fund to  
14 Claimants, Class Counsel and Class Representatives shall be done in  
15 accordance with the terms outlined in the Class Notice and Stipulation.  
16 Pursuant to the Class Notice and Stipulation, Defendant Earthgrains  
17 Baking Companies, Inc. ("Earthgrains") shall pay One Million Two  
18 Hundred Fifty Thousand Dollars and No Cents (\$1,250,000.00) to fund a  
19 Qualified Settlement Fund. Other than Earthgrains' payment to the  
20 Qualified Settlement Fund, Defendants shall not be required to make any  
21 payments in connection with the Settlement. The following payments  
22 shall be paid out of the Qualified Settlement Fund: (i) Class Counsel's  
23 attorneys' fees and costs in this matter; (ii) payment of reasonable fees to  
24 the Settlement Administrator for its services; (iii) a payment of \$3,000 to  
25 the Labor Workforce Development Agency ("LWDA"); (iv) Earthgrains'  
26 share of payroll taxes on the Settlement Payments (paid from any  
27 reversion to Earthgrains); and (v) enhancement payments to the Class  
28 Representatives. The Court finds that these payments are fair and



1 reasonable. Accordingly, the Court hereby awards to Class Counsel for  
2 attorneys' fees of \$312,500 and costs of \$16,000 as of the date of  
3 disbursement. The Court also hereby approves the payment of settlement  
4 administration costs in the amount of \$21,432.50 to Simpluris, Inc., the  
5 Settlement Administrator for services rendered in this matter. The  
6 enhancement awards to the Class Representatives in an amount of \$6,000  
7 per Class Representative are approved, including an unopposed amount of  
8 \$6,000 to the beneficiary of recently deceased named-plaintiff Robert W.  
9 Decker.

10 q. The Settlement Administrator is directed to make the foregoing payments  
11 to Class Counsel, the Settlement Administrator, the LWDA, and Class  
12 Representatives in accordance with the terms of the Stipulation. Those  
13 payments come out of the total Qualified Settlement Fund provided for in  
14 the Stipulation. After deducting the foregoing, the remaining shall  
15 constitute the Net Settlement Fund, and the Settlement Administrator shall  
16 distribute payments of Settlement Shares to Claimants, subject to the 33%  
17 minimum distribution, pursuant to the terms of the Stipulation.

18 r. The unclaimed Settlement Shares and uncashed Settlement Share checks  
19 shall revert to Earthgrains as set forth in the Stipulation.

20 s. The Defendants shall also cause to be posted in a centralized location at  
21 every depot where Class Members who are still RSRs work the relevant  
22 Collective Bargaining Agreement provisions pursuant to the terms of the  
23 Stipulation.

24 t. This matter is hereby dismissed with prejudice. The Court reserves and  
25 retains exclusive and continuing jurisdiction over the above-captioned  
26 matter, the Class Representatives, the Settlement Class, and Defendants  
27 for the purposes of supervising the implementation, effectuation,  
28

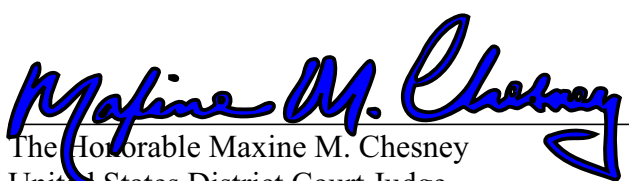
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enforcement, construction, administration and interpretation of the Settlement and this Judgment.

u. This document shall constitute a judgment for purposes of Rule 58 of the Federal Rules of Civil Procedure.

**IT IS SO ORDERED.**

Dated: December 14, 2012

  
The Honorable Maxine M. Chesney  
United States District Court Judge