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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

IN RE QUAKER OATS LABELING
LITIGATION

Case No. 5:10-cv-00502 RS
CLASS ACTION

~~PROPOSED~~ **ORDER PRELIMINARILY
APPROVING THE CLASS ACTION
SETTLEMENT, PROVISIONALLY
CERTIFYING A SETTLEMENT CLASS
FOR SETTLEMENT PURPOSES,
APPOINTING CLASS COUNSEL,
DIRECTING THE ISSUANCE OF
NOTICE TO THE CLASS, AND
SCHEDULING A FAIRNESS HEARING**

Judge: The Honorable Richard Seeborg

1 The Court has considered the Class Action Settlement Agreement, dated
2 December 20, 2013 (“Settlement Agreement”), the Parties’ motion for an order
3 preliminarily approving the Settlement Agreement, the record in this Litigation, the
4 arguments and recommendations made by counsel, and the requirements of law. The
5 Court finds and orders as follows:

6 1. Preliminary Approval of Settlement Agreement. The Settlement
7 Agreement is preliminarily approved. The Settlement Agreement and the Settlement it
8 incorporates appear fair, reasonable, and adequate, the terms of which are within the
9 range of reasonableness. The Settlement Agreement was entered into at arms’-length
10 by experienced counsel after extensive negotiations spanning months, including with
11 the assistance of a third party mediator, Judge Leo S. Papas (Ret.). The Settlement
12 Agreement is not the result of collusion.

13 2. Defined Terms. The Court, for purposes of this Preliminary Approval
14 Order, adopts all defined terms set forth in the Settlement Agreement.

15 3. Jurisdiction. For purposes of the Settlement of the Litigation, the Court
16 has subject matter and personal jurisdiction over the Parties, including all Class
17 Members, and venue is proper.

18 4. Class Certification for Settlement Purposes Only. The Court finds and
19 concludes that, for the purposes of approving this Settlement only, and for no other
20 purpose and with no other effect on the Litigation should the proposed Settlement
21 Agreement not ultimately be approved or should the Effective Date not occur, the
22 proposed Rule 23(b)(2) Settlement Class meets the requirements for certification under
23 Rule 23 of the Federal Rules of Civil Procedure: (a) the Class is so numerous that
24 joinder of all members is impracticable; (b) there are questions of law or fact common
25 to the Class; (c) the claims or defenses of the Representative Plaintiffs are typical of the
26 claims or defenses of the Class; (d) the Representative Plaintiffs and Class Counsel will
27 fairly and adequately protect the interests of the Class because the Representative
28 Plaintiffs have no interests antagonistic to the Class, and have retained counsel who are
experienced and competent to prosecute this matter on behalf of the Class; and (e) the

1 Defendant has acted on grounds that apply generally to the Class, so that final
2 injunctive relief is appropriate respecting the Class as a whole.

3 5. The proposed settlement was reached only after extensive investigation,
4 discovery, and motion practice in the Litigation, and was the result of protracted
5 negotiations conducted by the Parties, over the course of several months, including with
6 the assistance of a mediator, Judge Leo S. Papas (Ret.). The Representative Plaintiffs
7 and Class Counsel maintain that the Litigation and the claims asserted therein are
8 meritorious and that Plaintiffs and the Class would have prevailed at trial.
9 Notwithstanding, the Representative Plaintiffs and Class Counsel have agreed to settle
10 the Litigation pursuant to the provisions of the Settlement Agreement, after considering,
11 among other things: (i) the substantial benefits to Plaintiffs and the Class under the
12 terms of this Settlement Agreement; (ii) the uncertainty of being able to prevail at trial;
13 (iii) the uncertainty relating to Defendant's defenses and the expense of additional
14 motion practice in connection therewith; (iv) the issues relating to proving damages on
15 an individual Class Member basis; (v) the attendant risks of litigation, especially in
16 complex actions such as this, as well as the difficulties and delays inherent in such
17 litigation; and (vi) the desirability of consummating this Settlement promptly in order to
18 provide effective relief to Plaintiffs and the Class.

19 6. The Court finds that provisional approval of a Rule 23(b)(3) damages class
20 would be inappropriate given the likely difficulty in certifying and, if certified,
21 maintaining a damages class under Rule 23(b)(3). Were the Plaintiffs to seek
22 certification of a Rule 23(b)(3) damages class, they would face challenges that include,
23 but are not limited to, the difficulties caused by the fact that the packaging claims
24 evolved over the course of the Class Period and changed at different times for different
25 Class Members, several of the challenged labeling statements are not actionable due to
26 federal preemption, and the Class Members did not pay a uniform price for the
27 Products.

28 7. The Court accordingly certifies, for settlement purposes only, a Class
under Rule 23(b)(2), consisting of all persons and entities who purchased one or more
of the Products, identified in Exhibit D to the Settlement Agreement, a copy of which is

1 attached as Exhibit A to this Order, in the United States during the period February 3,
2 2006 through the Opt-Out Date. Excluded from the Class are: (a) persons or entities
3 who purchased the Products for the purpose of resale or distribution; (b) persons who
4 are employees, directors, officers, and agents of Defendant or its parent or subsidiary
5 companies; (c) governmental entities; (d) persons who timely and properly exclude
6 themselves from the Class as provided in the Settlement Agreement; and (e) any
7 judicial officer hearing this Litigation, as well as their immediate family members and
8 employees.

9 8. Class Representatives. Representative Plaintiffs Victor Guttmann, Sonya
10 Yrene, and Rebecca Yumul are designated as representatives of the provisionally
11 certified Class. The Court preliminarily finds that they are similarly situated to absent
12 Class Members, and, thus, are typical of the Class, and that they will be adequate class
13 representatives.

14 9. Class Counsel. Having considered the factors set forth in Rule 23(g)(1) of
15 the Federal Rules of Civil Procedure, the Court appoints Gregory Weston and Jack
16 Fitzgerald of The Weston Firm PC and Ronald Marron of the Law Offices of Ronald A.
17 Marron, APLC, as Class Counsel, whom the Court finds are experienced and adequate
18 counsel for purposes of these settlement approval proceedings.

19 10. Notice. The form and content of the proposed Long Form Notice and
20 Summary Notice, attached as Exhibit A and Exhibit B, respectively, to the Settlement
21 Agreement, and the notice methodology described in the Settlement Agreement and the
22 Notice Plan, attached as Exhibit C to the Settlement Agreement, are hereby approved.
23 The Court finds that the publication of the Notice in the manner, timing, and form set
24 forth in the Settlement Agreement satisfies due process. The foregoing is the best
25 notice practicable under the circumstances and shall constitute due and sufficient notice
26 to all Class Members. The Court approves the designation of Gajan Retnasaba of
27 Classaura to serve as the Court-Appointed Class Action Administrator for the
28 Settlement. The Class Action Administrator shall disseminate Class Notice and
supervise and carry out the Notice Plan, the processing of opt-out requests, and other
administrative functions, and shall respond to Class Member inquiries under the

1 direction and supervision of the Court. Defendant shall pay the cost of Notice up to one
2 hundred twenty thousand dollars (\$120,000). Any cost of Notice that exceeds \$120,000
3 shall be split equally between Defendant and the Class. The Court directs that Notice
4 shall be given to the Class as provided by the notice methodology described in the
5 Settlement Agreement and the Notice Plan.

6 11. Requests for Exclusion. Any Class Member who does not wish to
7 participate in the Settlement must submit a Request for Exclusion to the Class Action
8 Administrator, stating an intent to be “excluded” from the Settlement. The written
9 Request for Exclusion must be sent via first class United States mail to the Class Action
10 Administrator at the address set forth in the Notice and be postmarked no later than
11 thirty (30) calendar days before the date set for the Fairness Hearing. The Request for
12 Exclusion must be personally signed by the Class Member and may only be on behalf
13 of such signing Class Member. So-called “mass” or “class” opt-outs shall not be
14 allowed. Members who “opt-out” will not release their claims pursuant to the
15 Settlement Agreement. Every Request for Exclusion must contain his or her (a) full
16 name, (b) current address, (c) a clear statement communicating that he or she elects to
17 be excluded from the Class, does not wish to be a Class Member, and elects to be
18 excluded from any judgment entered pursuant to the Settlement, (d) his or her signature,
19 and (e) the case name and case number (*In re Quaker Oats Labeling Litigation*, Case
20 No. 5:10-cv-00502 (RS)). Class Members who fail to submit a timely and proper
21 Request for Exclusion on or before the date specified in the Notice shall be bound by all
22 terms of the Settlement Agreement and Final Judgment and Order.

23 12. Objections and Appearances. Any Class Member may object to the
24 settlement. Any objection to the Settlement, including any of its terms or provisions,
25 must be in writing, filed with the Court, with a copy served on Class Counsel, Defense
26 Counsel, and the Class Action Administrator at the addresses set forth below, and
27 postmarked no later than thirty (30) calendar days prior to the Fairness Hearing date.

28 **Class Counsel:**

Ronald A. Marron

Law Office of Ronald A. Marron

1 651 Arroyo Drive
2 San Diego, CA 92103

3 Gregory S. Weston
4 The Weston Firm
5 1405 Morena Blvd., Suite 201
6 San Diego, CA 92110

7 **Defense Counsel:**

8 Scott P. Martin
9 Gibson, Dunn & Crutcher LLP
10 1050 Connecticut Ave., N.W.
11 Washington, D.C. 20036

12 **Class Action Administrator:**

13 Quaker Settlement
14 Classaura Class Action Administration
15 780 Morosgo Drive #14103
16 Atlanta, GA 30324

17 Any objection regarding or related to the Settlement Agreement shall contain (a) the
18 objector's full name, address and telephone number; (b) the name, address, and
19 telephone number of any attorney for the objector with respect to the objection; (c) the
20 factual and legal grounds for the objection(s); (d) documents sufficient to establish the
21 basis for his or her standing as a Class Member, *i.e.*, verification under oath as to the
22 approximate date(s) and location(s) of his or her purchase(s) of the Products; (e) his or
23 her signature or the signature of the objector's counsel, if any; (f) the case name and
24 case number (*In re Quaker Oats Labeling Litig.*, No. 5:10-cv-00502 RS (N.D.Cal.)
25 (RS)); and (g) a specific list of any other objection by the objector, as well as by the
26 objector's attorney, to any class action settlements submitted to any court in the United
27 States in the previous five years. Any objections not containing the required
28 information and/or not submitted to the Court at least thirty (30) days prior to the
Fairness Hearing will be deemed waived and will not be considered by the Court.

13. If an objecting party chooses to appear at the hearing, that party must, in
addition to filing his or her objection, also file with the Court, at least thirty (30) days

1 before the Fairness Hearing, a notice of intent to appear listing the name, address and
2 telephone number of the attorney, if any, who will appear on behalf of that party.

3 14. A Class Member who appears at the Fairness Hearing, either personally or
4 through counsel, will be permitted to argue only those matters that were set forth in the
5 timely and validly submitted written objection filed by such Class Member. No Class
6 Member shall be permitted to raise matters at the Fairness Hearing that the Class
7 Member could have raised in his/her written objection, but failed to do so, and all
8 objections to the Settlement Agreement that are not set forth in a timely and validly
9 submitted written objection are deemed waived.

10 15. If a Class Member wishes to present witnesses or evidence at the Fairness
11 Hearing in support of a timely and validly submitted objection, all witnesses must be
12 identified in the objection, and true and correct copies of all supporting evidence must
13 be appended to, or filed and served with, the objection. Failure to identify witnesses or
14 provide copies of supporting evidence in this manner waives any right to introduce such
15 testimony or evidence at the Fairness Hearing. Plaintiffs or Defendant or both may take
16 discovery regarding the proposed witnesses and evidence, subject to Court approval.

17 16. Class Members who do not oppose the Settlement, the applications for
18 attorneys' fees and costs, or class representative incentive awards need not take any
19 action to indicate their approval.

20 17. Class Counsel and Defendant, shall have the right, but not the obligation,
21 to respond to any objection, by filing opposition papers no later than seven (7) calendar
22 days prior to the Fairness Hearing. The Party shall file a copy of the response with the
23 Court, and shall serve a copy on the objector (or counsel for the objector) to the extent
24 the objector or their counsel do not receive notice of electronic filings via the Court's
25 ECF filing system.

26 18. Fairness Hearing. A Fairness Hearing shall be held before this Court on
27 **Thursday, May 8, 2014 at 1:30 pm** at the United States District Court for the Northern
28 District of California, before the Honorable Richard Seeborg, District Judge, in
Courtroom 3, Phillip Burton Federal Building and United States Courthouse, 17th
Floor, 450 Golden Gate Avenue, San Francisco, California 94102, to determine whether

1 the settlement of the Litigation pursuant to the terms and conditions of the Settlement
2 Agreement should be approved as fair, reasonable and adequate, and finally approved
3 pursuant to Federal Rule of Civil Procedure Rule 23(e). The Court will hear any
4 arguments regarding, or objections to, Class Counsel’s application for an award of
5 attorneys’ fees, costs, and expenses and incentive awards for Plaintiffs (the “Fee
6 Application”) at that time. Papers in support of final approval of the Settlement
7 Agreement and Fee Application shall be filed with the Court according to the schedule
8 set forth in Paragraph 22, below. The Fairness Hearing may be postponed adjourned, or
9 continued by order of the Court without further notice to the Class. After the Fairness
10 Hearing, the Court may enter a Final Judgment and Order in accordance with the
11 Settlement Agreement that will adjudicate the rights of the Class Members (as defined
12 in the Settlement Agreement) with respect to the claims being settled.

13 19. The Class Action Administrator shall provide to the Parties and file with
14 the Court a list reflecting all timely Requests for Exclusion no later than seven (7) days
15 before the Fairness Hearing.

16 20. Stay of the Litigation. Pending the Fairness Hearing, all proceedings in the
17 Litigation, other than proceedings necessary to carry out and enforce the terms and
18 conditions of the Settlement Agreement and this Preliminary Approval Order, are
19 hereby stayed.

20 21. Stay of Collateral and Related Litigation. Class Members are
21 preliminarily enjoined from filing, commencing, prosecuting, intervening in,
22 participating in, maintaining as class members or otherwise, directly or indirectly
23 through a representative or otherwise, or receiving any benefits from, any lawsuit,
24 arbitration, government action, administrative or regulatory proceeding or order in any
25 jurisdiction, forum or tribunal asserting any Released Claims. In addition, all persons
26 are preliminarily enjoined from filing, commencing or prosecuting a lawsuit as a class
27 action (including by seeking to amend a pending complaint to include class allegations
28 or by seeking class certification in a pending action in any jurisdiction) on behalf of
Class Members, or asserting any Released Claims. Nothing herein shall require any

1 Class member to take any affirmative action with regard to other pending class action
2 litigation in which he or she may be an absent class member.

3 22. Termination of Settlement. In the event the Court does not grant final
4 approval of the Settlement, or for any reason the parties fail to obtain a Final Judgment
5 and Order as contemplated by the Settlement Agreement, or the Settlement Agreement
6 is terminated pursuant to its terms for any reason or the Effective Date does not occur
7 for any reason, then the following shall apply:

8 (a) All orders and findings entered in connection with the Settlement Agreement
9 shall become null and void and have no force and effect whatsoever, shall not be used
10 or referred to for any purposes whatsoever, and shall not be admissible or discoverable
11 in this or any other proceeding;

12 (b) The provisional certification of the Class pursuant to this Preliminary
13 Approval Order shall be vacated automatically, and the Litigation shall proceed as
14 though the Class had never been provisionally certified pursuant to the Settlement
15 Agreement and provisional findings related to Rule 23 shall have no force or effect for
16 the remainder of the Litigation;

17 (c) Nothing contained in this Preliminary Approval Order is, or may be construed
18 as, a presumption, concession or admission by or against Defendant or Plaintiffs of any
19 default liability or wrongdoing as to any facts or claims alleged or asserted in the
20 Litigation, or in any actions or proceedings, whether civil, criminal or administrative,
21 including, but not limited to, factual or legal matters relating to any effort to certify the
22 Class;

23 (d) Nothing in this Preliminary Approval Order or pertaining to the Settlement
24 Agreement shall be used as evidence in any further proceeding in this case, including,
25 but not limited to, motions or proceedings seeking certification of the Class; and

26 (e) All of the Court's prior orders having nothing whatsoever to do with the
27 Settlement shall, subject to this Preliminary Approval Order, remain in force and effect

28 23. Use of Order. This Preliminary Approval Order shall be of no force or
effect if the Settlement Agreement does not become final and shall not be construed or
used as an admission, concession, or declaration by or against Defendant of any fault,

1 wrongdoing, breach, or liability. Nor shall this Preliminary Approval Order be
2 construed or used as an admission, concession, or declaration by or against Plaintiffs or
3 the other Class Members that their claims lack merit or that the relief requested is
4 inappropriate, improper, or unavailable, or as a waiver by any party of any defenses or
5 claims he, she, or it may have in the Litigation or in any other lawsuit.

6 24. Class Counsel and Defense Counsel are hereby authorized to use all
7 reasonable procedures in connection with the approval and administration of the
8 Settlement Agreement that are not materially inconsistent with this Preliminary
9 Approval Order or the Settlement Agreement, including making, without further
10 approval of the Court, minor changes to the form or content of the Long Form Notice,
11 Summary Notice, and other exhibits that they jointly agree are reasonable or necessary.

12 25. The Court preliminarily approves the form of the Proposed Final Judgment
13 and Order.

14 26. Deadlines for Filings in Advance of the May 8, 2014 Fairness Hearing:

- 15 • Class Counsel shall file their Fee and Incentive Award Application by **April 3, 2014**;
- 16 • Objections to the Settlement Agreement and Fee and Incentive Award
17 Application shall be filed with the Court by **April 18, 2014**;
- 18 • Requests for Exclusion shall be sent to the Class Action Administrator
19 on or before **April 18, 2014**;
- 20 • A notice of appearance must be filed by any person who files an
21 objection and wants to be heard at the Fairness Hearing by **April 18,**
22 **2014**;
- 23 • The Parties shall file their papers in support of final approval of the
24 Settlement Agreement by **April 24, 2014**;
- 25 • Papers in response to objections to the Settlement Agreement or Fee
26 Application shall be filed with the Court on or before **May 1, 2014**;
- 27 • The Class Action Administrator shall file a list reflecting all timely
28 Requests for Exclusion with the Court no later than **May 1, 2014**;
- Before the Fairness Hearing, Defendant will file a certification with the
Court stating the date or dates on which the CAFA Notice to attorney
generals became effective.

1 Upon application of the parties and good cause shown, the deadlines set forth in this
2 Preliminary Approval Order may be extended by order of the Court, without further
3 notice to the Class. Class members must check the settlement website
4 (www.QuakerLawsuit.com) regularly for updates and further details regarding
5 extensions of these deadlines.

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7 **IT IS SO ORDERED.**

8 DATED: 2/12/14



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10 The Honorable Richard Seeborg
11 UNITED STATES DISTRICT JUDGE
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Exhibit A – Products

The following varieties of Quaker Oatmeal to Go Bars:

- Apples & Cinnamon
- Banana Bread
- Brown Sugar & Cinnamon
- High Fiber Maple & Brown Sugar
- Oatmeal Raisin
- Raspberry Streusel

The following varieties of Instant Quaker Oatmeal:

- Peaches & Cream
- Strawberries & Cream
- Bananas & Cream
- Blueberries & Cream
- Reduced Sugar Strawberries & Cream
- Reduced Sugar Peaches & Cream
- Reduced Sugar Fruit & Cream Variety Pack
- Apples & Cinnamon
- Bakery Favorites – Banana Bread
- Chocolate Chip
- Cinnamon Roll
- Honey Bun
- Cinnamon & Spice
- Maple & Brown Sugar
- Maple & Brown Sugar (Organic)
- Original
- Raisin Date & Walnut
- Raisin & Spice
- Bakery Favorites – Cinnamon Roll
- Low Sugar Maple & Brown Sugar

- 1 • Low Sugar Apples & Cinnamon
- 2 • Weight Control Maple & Brown Sugar
- 3 • Weight Control Banana Bread
- 4 • High Fiber Maple & Brown Sugar
- 5 • High Fiber Cinnamon

6 The following varieties of Quaker Chewy Bars:

- 7 • Chocolate Chip
- 8 • Peanut Butter Chocolate Chip
- 9 • S'mores
- 10 • Reduced Sugar Chocolate Chip
- 11 • Reduced Sugar Peanut Butter Chocolate Chip
- 12 • 90 Calorie Peanut Butter
- 13 • 90 Calorie Low Fat Chocolate Chunk
- 14 • Reduced Sugar Cookies & Cream
- 15 • Nestle Crunch
- 16 • Nestle Butterfinger
- 17 • Cookies & Milk Chocolate Mint
- 18 • Dark Chocolate Cherry
- 19 • Cookies & Milk
- 20 • Peanut Butter
- 21 • 90 Calorie Low Fat Honey Nut
- 22 • Low Fat Maple Brown Sugar
- 23 • Low Fat Cinnamon Sugar
- 24 • Low Fat Baked Apple
- 25 • Low Fat Oatmeal Raisin

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