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BIMBO BAKERIES USA, INC.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

ALEX ANG and LYNN STREIT,
individually and on behalf of all others
similarly situated,

Plaintiffs,

v.

BIMBO BAKERIES USA, INC.,

Defendant.

Case No. 3:13-CV-1196-HSG

**RENEWED JOINT MOTION FOR
PRELIMINARY APPROVAL OF PROPOSED
CLASS ACTION SETTLEMENT**

Judge: Hon. Haywood S. Gilliam, Jr.
Action Filed: March 18, 2013

To be decided without hearing per Court order

1 In accordance with the Court's April 8, 2020 docket text order ("April 8 Order", ECF No.
 2 234), Plaintiffs Alex Ang and Lynne Streit (collectively, the "Plaintiffs") and Defendant Bimbo
 3 Bakeries USA, Inc. ("BBUSA") (collectively, the "Parties") respectfully submit this renewed joint
 4 motion for preliminary approval of proposed class action settlement (the "Settlement") of this lawsuit.
 5 The April 8 Order directs: "The parties' motion should reflect any changes from their prior motion,
 6 but does not need to repeat the earlier motion in its entirety." (*Id.*) Accordingly, the Parties
 7 respectfully adopt and incorporate by reference herein (1) their December 13, 2019 Joint Motion for
 8 Preliminary Approval (ECF No. 217), (2) their February 20, 2020 Joint Statement attaching the
 9 Revised Settlement Agreement (ECF No. 222), (3) their March 3, 2020 Supplemental Joint Statement
 10 (ECF No. 226), (4) their March 20, 2020 Proposed Notice Plan (ECF No. 231) and (5) their April 7,
 11 2020 Joint Case Management Statement (ECF No. 233).

12 The Settlement's terms are set forth in the Revised Settlement Agreement and Release
 13 (hereinafter the "Agreement") attached as Exhibit A to Parties' February 20, 2020 Joint Statement
 14 (ECF No 221-1) and resubmitted herewith. (Declaration of Joshua D. Glatter ("Glatter Decl."), Ex.
 15 A.) As set forth in the Parties' prior submissions, the Settlement was reached after a lengthy period
 16 of litigation, culminating in the Court's decision to certify a Fed. R. Civ. P. 23(b)(2) class and deny
 17 certification of a Rule 23(b)(3) class. (*See* August 31, 2018 Order Granting in Part and Denying in Part
 18 Plaintiffs' Motion for Class Certification (ECF. No. 186, the "Class Certification Order").) Following
 19 the Class Certification Order, the Parties engaged in mediation proceedings conducted by the Hon.
 20 Philip M. Pro (Ret.), former Chief Judge for the United States District Court for the District of
 21 Nevada, resulting in the original Settlement Agreement. Having now revised the original agreement
 22 to address the Court's previously expressed concerns, including those detailed in the Court's March
 23 31, 2020 order denying the original Preliminary Approval Motion (ECF No. 232),¹ the Parties
 24 respectfully submit that preliminary approval of the Agreement is warranted. As instructed by the
 25 Court, the Parties address the revisions to the original Settlement Agreement and changes from their
 26 prior motion below.

27
 28 ¹ The "Mar. 31 Order", reported at *Ang v. Bimbo Bakeries USA, Inc.*, 2020 U.S. Dist. LEXIS 56273, at
 *1 (N.D. Cal. Mar. 31, 2020).

I. THE AGREEMENT INCLUDES AN APPROPRIATELY SCOPED RELEASE

At the February 13, 2020 hearing on the Preliminary Approval Motion, the Court expressed a concern that, as written, the original Settlement Agreement resulted in an overly-broad release of claims not certified in the Class Certification Order. (*See* Mar. 31 Order at *5.) In response, the Parties agreed to modify the Settlement and entered into the Agreement. (*See* ECF No. 222.) As detailed in the Parties' February 20, 2020 submission, section 8 of the original Settlement Agreement and any related terms have been modified in the Agreement to release only: (1) all claims for injunctive relief against BBUSA that were certified for class treatment in the Class Certification Order; and (2) Plaintiffs' individual claims brought against BBUSA on their own behalf in their individual capacity. (*See* Glatter Decl., Ex. A at §8.) Thus, there are no differences between the claims to be released under the Agreement and those certified for class treatment. (*Id.*) There are also no differences between the Settlement class and the class certified in the Class Certification Order. (*Id.* at §1.7.)

II. THE REVISED SETTLEMENT PROVIDES REASONABLE NOTICE TO THE CLASS

A. Relevant Legal Standards

Although, for the reasons explained in the Parties' March 3, 2020 Supplemental Joint Statement, notice is not *per se* required for a Rule 23(b)(2) injunctive-relief-only settlement, the Court has discretion to require reasonable notice in connection with granting preliminary approval. *See* Fed. R. Civil P. 23(c)(2); *Walters v. Target Corp.*, 2019 U.S. Dist. LEXIS 207489, at *21 (S.D. Cal. Dec. 4, 2019) ("For a Rule 23(b)(2) class, the court may direct appropriate notice"); *Kim v. Space Pencil, Inc.*, 2012 U.S. Dist. LEXIS 169922, at *11 (N.D. Cal. Nov. 28, 2012) ("As the rule indicates, whether to direct notice is a decision within the court's discretion"). *But see Diva Limousine, Ltd. v. Uber Techs., Inc.*, 392 F. Supp. 3d 1074, 1096 (N.D. Cal. 2019) ("In contrast to Rule 23(b)(3) classes, which permit class members to opt-out of an unfavorable decision and require 'the best notice that is practicable' to class members, Rule 23(b)(2) class members may not opt out and are only entitled to 'appropriate notice' directed in the court's discretion"). "[T]he mechanics of the notice process are left to the discretion of the court subject only to the broad 'reasonableness' standards imposed by due process." *Walters*, 2019 U.S. Dist. LEXIS 207489, at *21

(citing *Grunin v. Int'l House of Pancakes*, 513 F.2d 114, 120 (8th Cir. 1975)) (internal citations omitted).

The Parties are also mindful of the Ninth Circuit's decision in *Campbell v. Facebook, Inc.*, 951 F.3d 1106, 1127 & n.15 (9th Cir. 2020), which the Court observed signals that judicial caution is warranted when parties to a class action settlement are hesitant to provide notice to absent class members. (*See also* March 31 Order at *10 ("If the class action settlement is 'fundamentally fair, adequate and reasonable,' as required under Rule 23, the parties should have no fear or hesitation about disclosing its terms to absent class members").)

With these principles in mind, and having engaged in a negotiation process regarding Notice in accordance with the Agreement's requirements (*see* Glatter Decl., Ex. A at §6.1), the Parties respectfully submit that the proposed notice meets and exceeds the modest thresholds governing notice for this Rule 23(b)(2) Settlement.

B. The Parties' Agreed Notice Plan

As they informed the Court in their prior joint statements, the Parties have agreed to multiple forms of class notice. (*See* ECF No. 231; ECF No. 233.) First, the Parties will issue a joint press release that is substantively similar to the notice language set forth in Section II(B)(1) below. The press release will be issued no later than thirty (30) days following the Court's order granting preliminary approval of the Agreement.

Second, Class Counsel will post the proposed notice language on their public websites (<https://www.prattattorneys.com/> and <https://www.fbrllp.com/>), along with relevant case documents, including the Second Amended Complaint, the Court's Order Granting in Part and Denying in Part Motion for Class Certification, the Settlement Agreement, the Joint Motion for Preliminary Approval, the Order Granting Preliminary Approval, any Motion for Final Approval, any Motion for Attorneys' Fees and Incentive Awards and any orders on those motions.

Third, BBUSA will post the same proposed notice language on BBUSA's public website, together with links to the same documents that Class Counsel will make available on their websites. Subject to the Court's approval, BBUSA will place the notice language in the "Media Inquiries" section of its website, which is where BBUSA posts product recall information. This section of BBUSA's

1 website can be accessed by clicking “About Us” or “Media Center” on BBUSA’s home page
 2 (<https://www.bimbobakeriesusa.com/about-us>). BBUSA further agrees that the notice and
 3 documents will be available on its website until the Court holds a final approval hearing and rules on
 4 the Parties’ final joint approval motion.

5 Fourth, in accordance with the Class Action Fairness Act (“CAFA”), BBUSA will provide
 6 notice to the United States and California Attorneys General. *See* 28 U.S.C. § 1715. The Parties will
 7 request that the Court defer any decision granting final approval of the settlement until at least ninety
 8 (90) days after the Court grants preliminary approval, which will allow sufficient time to provide notice
 9 of any Order Granting Preliminary Approval to the Attorneys General. *See* 28 U.S.C. § 1715(d).

10 Lastly, although the core settlement documents will be accessible on Class Counsel’s and
 11 BBUSA’s websites, all relevant case documents, including the Second Amended Complaint, the Order
 12 Granting in Part and Denying in Part Motion for Class Certification, the Settlement Agreement, the
 13 Joint Motion for Preliminary Approval, the Court’s orders relating to the settlement, the Parties’ joint
 14 statements in support of preliminary approval, any Motion for Final Approval, any Motion for
 15 Attorneys’ Fees and Incentive Awards and any orders on those motions are (or will be made upon
 16 filing) accessible through the publicly-available PACER/CM-ECF system.

17 **1. Proposed Notice Language**

18 The Parties propose that the following notice language be posted on Class Counsel’s and
 19 BBUSA’s public websites to inform Class Members of the settlement and its terms:

20 **“NOTICE OF CLASS ACTION SETTLEMENT REGARDING**

21 **BIMBO BAKERIES USA, INC. LABELING CLAIMS**

22 **Pratt & Associates and Fleischmann Bonner & Rocco LLP (“Class Counsel”), and**
 23 **Bimbo Bakeries USA, Inc. (“Bimbo Bakeries”) are pleased to announce the settlement of a**
 24 **lawsuit that Class Counsel commenced in 2013 against Bimbo Bakeries in the U.S. District**
 25 **Court for the Northern District of California. The case is entitled *Ang v. Bimbo Bakeries***
 26 ***USA, Inc.* (Case No. 13-CV-01196-HSG-NC) and claims that statements on the labels and in**
 27 **the ingredient lists of certain Bimbo Bakeries products were unlawful, misleading or**
 28 **deceptive to consumers. Bimbo Bakeries has denied and continues to deny the allegations**

1 in the lawsuit. On August 31, 2018, the U.S. District Court certified a class of California
2 purchasers of Bimbo Bakeries products for purposes of injunctive relief only, and denied class
3 certification of any damages claims (the “Class Certification Order”). All persons or entities
4 who or that made purchases in California of any Bimbo Bakeries products identified in the
5 Class Certification Order are part of the injunctive relief class (“Class Members”). A full list
6 of the products at issue can be found in the Court’s Class Certification Order, which is
7 available on this website.

8 This notice summarizes the proposed settlement on behalf of Plaintiffs and all Class
9 Members.

10 Terms of the Settlement

11 The settlement provides immediate benefits to Class Members in the form of an
12 agreement by Bimbo Bakeries to certify that it has changed, removed or discontinued the
13 labels or ingredient statements of the products challenged in the lawsuit. A list of the specific
14 changes to the product labels and ingredients can be found in the Settlement Agreement.
15 Bimbo Bakeries has also agreed, for a period of two (2) years, to notify Class Counsel of any
16 changes to the label statements or ingredients of the products at issue, if the changes relate
17 to the challenged claims listed in the Settlement Agreement. If Class Counsel objects to the
18 changes that Bimbo Bakeries intends to make to those product labels or ingredients, Class
19 Counsel and Bimbo Bakeries will work together to resolve any dispute.

20 Bimbo Bakeries is providing these benefits to Class Members in exchange for a release
21 of Class Members’ rights to bring a lawsuit against Bimbo Bakeries for an injunction,
22 declaratory judgment or other related claims to stop or change the labeling and ingredient
23 statements challenged in the lawsuit because those changes have already been made. If the
24 settlement is approved by the Court, Class Members will release their ability to seek or obtain
25 injunctive relief relating to the claims asserted in the lawsuit. Class Members will not release
26 any claims for monetary relief.

27 Attorneys’ Fees

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As part of the settlement, Class Counsel can apply to the Court for an award of up to \$305,000 in attorneys' fees and costs to reimburse them for the time and effort they spent in bringing and litigating the case. Class Counsel will also request that the Court award \$10,000 to each of the Plaintiffs for their efforts in litigating the case and assisting Class Counsel. With the Court's approval, Bimbo Bakeries has agreed to pay to Plaintiffs and Class Counsel any attorneys' fees and costs that the Court awards, as well as any incentive awards, provided the total amount does not exceed \$325,000.

Access to Case Documents

You may view the Settlement Agreement and other related documents (including the Joint Motion for Preliminary Approval of Class Action Settlement, the Court's Order Granting Preliminary Approval of Class Action Settlement, the Motion for Final Approval of Class Action Settlement, Plaintiffs' Motion for Award of Attorneys' Fees and Incentive Awards and any opposition or reply papers related to these motions) as these documents become available by visiting: (a) Fleischman Bonner and Rocco's public website (<https://www.fbrllp.com/blog>), thereafter clicking on the "News Archives" tab and clicking on the relevant highlighted text regarding the Bimbo Bakeries settlement; (b) Pratt & Associates public website (<https://prattattorneys.com/about-us>), thereafter clicking on the "About Us" Tab and clicking on the relevant highlighted text regarding the Bimbo Bakeries settlement; or (c) clicking "About Us" or "Media Center" on BBUSA's home page (<https://www.bimbobakeriesusa.com/about-us>) and thereafter clicking the relevant highlighted text regarding the Bimbo Bakeries settlement.

You may also review any case documents by accessing the Court docket in this case, for a fee, through the Court's Public Access to Court Electronic Records (PACER) system at <https://ecf.cand.uscourts.gov>, or by visiting the office of the Clerk of the Court for the United States District Court for the Northern District of California, 1301 Clay Street, Suite 400 S, Oakland, California 94612, between 9:00 a.m. and 4:00 p.m., Monday through Friday, excluding Court holidays. **PLEASE DO NOT TELEPHONE THE COURT OR THE**

1 COURT CLERK'S OFFICE TO INQUIRE ABOUT THIS SETTLEMENT.

2 Court Approval of the Settlement

3 The Court must approve the settlement. On _____, the Court granted
 4 preliminary approval of the settlement. On _____, at the United States District
 5 Court for the Northern District of California, Oakland Courthouse, Courtroom 2 - 4th Floor,
 6 1301 Clay Street, Oakland, California 94612, before the Honorable Haywood S. Gilliam, Jr.,
 7 the Court will hold a hearing to determine whether final approval of this class action
 8 settlement is appropriate. The date of the final approval hearing may change without special
 9 notice to Class Members. Class Members should check this website or the Court's PACER
 10 site to confirm that the date has not changed.

11 Comments and Objections

12 Because Bimbo Bakeries is providing injunctive relief to the class as a whole under
 13 the settlement, Class Members cannot "opt out" of the settlement. However, Class Members
 14 may submit comments or ask the Court to deny approval by filing an objection to the
 15 settlement. Class Members cannot ask the Court to order a different settlement; the Court
 16 can only approve or reject the settlement that the parties have reached. If the Court denies
 17 approval, no injunctive relief will be provided and the lawsuit will continue.

18 Any objection to the proposed settlement must be in writing. Any Class Member who
 19 timely files a timely written objection may, but is not required to, appear at the Final Approval
 20 Hearing, either in person or through an attorney. If a Class Member appears through an
 21 attorney, the Class Member is responsible for hiring and paying that attorney. All written
 22 objections and supporting papers must (1) clearly identify the case name and number (*Ang v.*
 23 *Bimbo Bakeries USA, Inc.*, Case No. 13-CV-01196-HSG-NC), (2) be submitted to the Court
 24 either by mailing them to the Class Action Clerk, United States District Court for the Northern
 25 District of California, 1301 Clay Street, Oakland, California 94612, or by filing them in person
 26 at any location of the United States District Court for the Northern District of California, and
 27 (3) be filed or postmarked on or before _____."

CONCLUSION

Having been revised in accordance with the Court's prior order and guidance, the Parties maintain that the Agreement is in their mutual best interests and will conserve resources and promote judicial efficiency and economy, while at the same time providing meaningful benefits to the Class. Furthermore, each party has taken into account the investigation of the claims, the orders of the Court and the uncertainties, delays, expenses and exigencies of the litigation process in reaching this conclusion, including notice considerations. Accordingly, for the reasons set forth in this renewed joint motion, the Parties' original joint motion and their other joint submissions adopted and incorporated by reference in this renewed motion, the Parties respectfully request the Court: (1) grant preliminary approval of the Settlement; (2) schedule the final approval hearing; and (3) issue such other and further relief as the Court deems just and proper.

Dated: April 17, 2020

Respectfully submitted,

/s/ Keith M. Fleischman

/s/ Mark C. Goodman

Keith M. Fleischman (admitted *pro hac vice*)

Mark C. Goodman (SBN 154692)

Joshua D. Glatter (admitted *pro hac vice*)

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Attorneys for Plaintiffs

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8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA
10 OAKLAND DIVISION

11 ALEX ANG and LYNN STREIT,
12 individually and on behalf of all others
13 similarly situated,

14 Plaintiffs,

15 v.

16 BIMBO BAKERIES USA, INC.,

17 Defendant.
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Case No. 3:13-CV-1196-HSG

DECLARATION OF

JOSHUA D. GLATTER

Judge: Hon. Haywood S. Gilliam, Jr.
Action Filed: March 18, 2013

1 JOSHUA D. GLATTER hereby declares, pursuant to 28 U.S.C. § 1746, as follows:

2 1. I am a partner of Fleischman Bonner & Rocco LLP, counsel of record for plaintiffs
3 Alex Ang and Lynne Streit (“Plaintiffs”) in the above-captioned action. I am a member in good
4 standing of the Bar of the State of New York. The Court granted my application for admission *pro*
5 *hac vice* on May 2, 2016. *See* ECF No. 162.

6 2. I make this declaration in support of the parties’ renewed joint motion for preliminary
7 approval of proposed class action settlement.

8 3. Annexed hereto as Exhibit A is a true and correct copy of the Revised Class Settlement
9 Agreement and Release, dated February 20, 2020.

10 4. Annexed hereto as Exhibit B is a true and correct copy of the [Proposed] Order
11 Granting Preliminary Approval of Proposed Class Action Settlement.

12 I declare under penalty of perjury under the laws of the State of California and the United
13 States of America that the foregoing is true and correct to the best of my knowledge and that this
14 declaration was executed on April 17, 2020 in White Plains, New York.

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16 /s/ Joshua D. Glatter

17 Joshua D. Glatter
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EXHIBIT A

CLASS SETTLEMENT AGREEMENT AND RELEASE

This Class Settlement Agreement and Release (“Settlement Agreement”) is made and entered into by and between Plaintiffs Alex Ang and Lynne Streit, individually and on behalf of all members of the Class, and Defendant Bimbo Bakeries USA, Inc. (“BBUSA”), pursuant to Federal Rule of Civil Procedure 23 and subject to Court approval in the action entitled *Ang v. Bimbo Bakeries USA, Inc.*, Case No. 4:13-cv-01196-HSG, pending in the United States District Court for the Northern District of California (hereinafter the “Class Action”). The Settlement Agreement sets forth the terms, conditions and provisions of the settlement of the Class Action and the release of all Injunctive Relief Claims and the Individual Claims as defined herein.

RECITALS

WHEREAS, on March 18, 2013, Plaintiffs filed a putative class action against BBUSA in the United States District Court for the Northern District of California in *Ang v. Bimbo Bakeries USA, Inc.*, Case Number 13-cv-1196;

WHEREAS, on November 4, 2013, Plaintiffs filed the operative Second Amended Complaint (the “SAC”) against BBUSA alleging violations of California’s Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, the California False Advertising Law, Cal. Bus. & Prof. Code §§ 17500 *et seq.*, and the Consumers Legal Remedies Act, Cal. Civil Code §§ 1750 *et seq.*, based on allegations that certain of BBUSA’s products were mislabeled;

WHEREAS, BBUSA denies all of the allegations stated in the SAC;

WHEREAS, on August 31, 2018, the Court entered an Order Granting in Part and Denying in Part Plaintiffs’ Motion for Class Certification, certifying four California classes for injunctive relief only and denying class certification with respect to all claims against BBUSA for damages;

WHEREAS, the Parties have engaged in extensive discovery, including

exchanging documents, taking the depositions of Plaintiffs and BBUSA, and producing expert reports;

WHEREAS, on July 31, 2019, the parties attended a full-day mediation with the Hon. Philip M. Pro (Ret.), former Chief Judge for the United States District Court for the District of Nevada and a professional mediator with JAMS who has experience in mediating class actions;

WHEREAS, after arm's length negotiations supervised by Judge Pro, the Parties agreed to resolve the Class Action, subject to the Court's approval, and Plaintiffs' Individual Claims against BBUSA;

WHEREAS, to resolve their dispute on a class-wide basis and to avoid the need to further expend valuable resources, the Parties desire to enter into this Settlement Agreement subject to the Court's approval; and

WHEREAS Plaintiffs and Class Counsel neither admit nor concede any lack of merit of the Claims, but have agreed to settle this matter in order to avoid the expense, inconvenience, burden, and uncertainty of further litigation, and BBUSA admits no fault or liability, and instead expressly denies any fault or liability in connection with the Claims, but has agreed to settle this matter only to avoid the expense, inconvenience and uncertainty of further litigation.

SETTLEMENT TERMS

1. DEFINITIONS

Unless otherwise expressly stated herein, the following terms, as capitalized and used in this Settlement Agreement, shall have the following meanings and definitions:

1.1 "BBUSA" or "Defendant" means Bimbo Bakeries USA, Inc. and its predecessors, successors, assignors, assignees, subsidiaries, parents, affiliates, acquired entities, officers, insurers and reinsurers, directors, employees, agents, legal representatives, partnerships, joint ventures, attorneys, owners and/or shareholders.

1.2 "Claims" mean all allegations, demands and assertions in the SAC and

any other filings or documents in the Class Action regarding the alleged improper labeling of any of the Products, which claims are denied by BBUSA.

1.3 “Class” means the persons included in the Class Definition stated below.

1.4 “Class Action” means the class action litigation filed by Plaintiffs in the United States District Court for the Northern District of California entitled *Ang v. Bimbo Bakeries USA, Inc.*, Case No. 4:13-cv-01196-HSG.

1.5 “Class Certification Order” means the Court’s August 31, 2018 Order Granting in Part and Denying in Part Motion for Class Certification, Docket No. 186 in the Class Action.

1.6 “Class Counsel” means the following attorneys who represent Plaintiffs and who shall seek to be appointed as counsel for the Class: Ben F. Pierce Gore of Pratt & Associates, and Keith M. Fleischman and Joshua D. Glatter of Fleischman Bonner & Rocco LLP.

1.7 “Class Definition” means: All persons or entities who or that made purchases in California of any BBUSA products identified in the Class Certification Order. In the event the Court should alter or modify the Class Definition, and such amended Class Definition is accepted in writing by the Plaintiffs and BBUSA, such amended Class Definition shall be considered the “Class Definition” under this Settlement Agreement and all references to Class Definition in this Settlement Agreement shall mean and refer to such accepted, amended Class Definition.

1.8 “Class Members” means those persons and/or entities who or that are included within the Class Definition.

1.9 “SAC” means the Second Amended Complaint filed against BBUSA in the Class Action on November 4, 2013.

1.10 “Court” means the United States District Court for the Northern District of California, the Honorable Haywood S. Gilliam, Jr., or any other court of law or judge to which the Class Action may be reassigned.

1.11 “Final Approval Hearing” means the hearing by the Court to determine whether to approve and implement the terms of the Settlement Agreement.

1.12 “Final Judgment and Order” means the final order and judgment to be entered by the Court in the Class Action.

1.13 “Individual Claims” means any Claims brought by or that could have been brought by Plaintiffs on their own behalves in their individual capacities.

1.14 “Injunctive Relief Claims” means any Claims for injunctive, declaratory or other equitable relief that were certified for class treatment in the Class Certification Order.

1.15 “Order of Preliminary Approval” means the order to be entered by the Court preliminarily approving the Settlement Agreement.

1.16 “Parties” or “Party” means and refer to Plaintiffs, the Class and/or BBUSA.

1.17 “Plaintiffs” means Alex Ang and Lynne Streit and their predecessors, successors and assigns.

1.18 “Products” means the products at issue in the Class Action, as defined in the Class Certification Order.

1.19 “Settlement Agreement” means this Class Settlement Agreement and Release and all exhibits and amendments thereto.

1.20 “Settlement Effective Date” means the day after the occurrence of both of the following: (a) the Settlement Agreement is executed and delivered by all Parties and approved by the Court, and (b) entry of the Final Judgment and Order approving the settlement.

2. NATURE AND STATUS OF THE CLASS CLAIMS

2.1 Stated generally, the Claims involve claims for relief and damages relating to alleged improper labeling of the Products. Plaintiffs and the Class assert and BBUSA denies that BBUSA has a responsibility to provide such injunctive relief and/or is liable for any damages.

2.2 As a result of the litigation, the Claims have been substantially investigated and/or are substantially understood so that the Parties are in a reasonable position to assess the merits and weaknesses of the Claims and the defenses thereto.

2.3 Substantial time and effort has been expended by the Parties and their counsel in drafting and negotiating the terms and conditions of this Settlement Agreement.

3. BASIS FOR THE PROPOSED SETTLEMENT

3.1 As a result of the litigation to date, including their investigation and discovery, the Parties entered into negotiations to settle the Claims and attended mediation to further their settlement efforts, taking into account the following considerations: (a) the merits or lack thereof of the Claims; (b) the relative strengths and weaknesses of the Claims; (c) the time, expense and effort that would be required to continue to litigate the Class Action through summary judgment, trial and/or appeal; (d) the possibilities of success weighed against the possibilities of failure with respect to their respective positions in the litigation; (e) the range of possible outcomes, including outcomes as a result of the Court's Class Certification Order, which only certified a Rule 23(b)(2) injunctive relief class; (f) the complexities of the contested issues regarding the Claims; (g) the risks inherent in protracted litigation; (h) the magnitude of benefits to be gained from immediate settlement in light of both the maximum potential of a favorable outcome with the attendant expense and likelihood of an unfavorable outcome; and (i) the benefits resulting from an immediate settlement in light of all of the foregoing considerations.

4. GENERAL PROVISIONS AND PURPOSES OF THE SETTLEMENT

4.1 The Parties have reached agreement to finally resolve all Injunctive Relief Claims and the Individual Claims. The Parties agree that proceeding in this manner is in their best interests and will conserve resources and promote judicial efficiency and economy.

4.2 In entering into this Settlement Agreement, each Party hereto has taken into account the investigation and litigation of the Claims to date and the uncertainties,

delays, expenses and exigencies of the litigation process. The Parties have engaged in robust discovery and investigation of the claims at issue, engaged in extensive motion practice and participated in formal mediation proceedings supervised by a former federal district court judge, all of which has been considered in entering this Settlement Agreement. BBUSA has denied, and continues to deny, any liability, wrongdoing or responsibility for the Claims and believes that they are without merit.

4.3 The Parties hereto have evaluated the Claims, considering the nature and extent of the alleged injury and the alleged liability of BBUSA.

4.4 In exchange for the releases set forth herein, and for other good and valuable consideration, BBUSA certifies that it has made the following changes to the labels and reformulations of the Products. For those brands that BBUSA divested and no longer controls in California, BBUSA's certification as to any labeling changes or reformulations is made as of the date of the latest information known to BBUSA. The Parties agree that BBUSA cannot and need not certify the current status of the labeling or formulations of products that it no longer owns or controls.

Product Name	Changes Made
Oroweat Dark Rye Bread	<ul style="list-style-type: none"> • Color removed
Oroweat Sweet Hawaiian Bread	<ul style="list-style-type: none"> • Color removed
Sara Lee 100% Whole Wheat Bread (Classic 100% Whole Wheat Bread)	<ul style="list-style-type: none"> • Soy flour removed from ingredients list • "Good source of whole grain" claim removed • Brand was divested and is no longer controlled by BBUSA in California
Sara Lee Soft & Smooth Whole Grain White Bread	<ul style="list-style-type: none"> • "Good source of whole grain" claim removed • Brand was divested and is no longer

	controlled by BBUSA in California
Sara Lee Soft & Smooth 100% Whole Wheat Bread	<ul style="list-style-type: none"> • “Good source of whole grain” claim removed • Brand was divested and is no longer controlled by BBUSA in California
Thomas’ Plain Bagel Thins	<ul style="list-style-type: none"> • American Heart Association (“AHA”) Heart Check Mark removed
Thomas’ 100% Whole Wheat Bagel Thins	<ul style="list-style-type: none"> • AHA Heart Check Mark removed • Soy flour removed from ingredients list • Product discontinued
Thomas’ Everything Bagel Thins	<ul style="list-style-type: none"> • AHA Heart Check Mark removed
Bimbo Original Toasted Bread	<ul style="list-style-type: none"> • Color removed
Bimbo Double Fiber Toasted Bread	<ul style="list-style-type: none"> • Color removed
Bimbo 100% Whole Wheat Tortillas	<ul style="list-style-type: none"> • Discontinued
Thomas’ Cinnamon Raisin Swirl Toasting Bread	<ul style="list-style-type: none"> • Color removed
Thomas’ 100% Whole Wheat Bagels	<ul style="list-style-type: none"> • Soy flour removed from ingredients list
Thomas’ 100% Whole Wheat Mini Bagels	<ul style="list-style-type: none"> • Soy flour removed from ingredients list • Product discontinued
Sahara 100% Whole Wheat Pita Pockets	<ul style="list-style-type: none"> • Soy flour removed from ingredients list • Product discontinued
Thomas’ 100% Whole Wheat English Muffins	<ul style="list-style-type: none"> • Soy flour removed from ingredients list

4.5 BBUSA acknowledges that the Class Action was a consideration in deciding to make the labeling changes and reformulations of the Products set forth in Section 4.4.

4.6 BBUSA certifies, and the Parties agree, that the labeling changes and processes that BBUSA has put in place with respect to the Products reflect tangible value to consumers.

4.7 BBUSA further agrees that, for a period of two years from the Settlement Effective Date, and subject to a confidentiality order, BBUSA will advise a designated representative of Class Counsel of any changes to the Products' labels as soon as reasonably practicable (the "Notice") to the extent those changes relate to the Products' labeling in California as follows:

4.7.1 For the "Whole Grain" Products: Any labeling statement that a product is a "good source of whole grain" or an "excellent source of whole grain";

4.7.2 For the "100% Whole Wheat" Products: Any change to the product formulation to include "soy flour" as an ingredient;

4.7.3 For the "Added Coloring" Products: Any change to the product formulation to include "coloring" as an ingredient.

4.8 Class Counsel shall have fifteen (15) days from the date of the Notice to inform BBUSA of any objection to a labeling change under Section 4.7 of this Settlement Agreement. The Parties will amicably and in good faith attempt to resolve all disputes over labeling changes on an informal basis; that is, without litigation or court intervention.

4.9 BBUSA is willing to enter into this Settlement Agreement so that it will be relieved and discharged from any and all liability or responsibility relating to Injunctive Relief Claims by any Class Members and the Individual Claims. The Parties recognize the necessity for a procedural means by which to fully and finally resolve all potential liability and/or responsibility for the Injunctive Relief Claims and the Individual Claims

asserted against BBUSA through a negotiated settlement. It is expressly the intention of this Settlement Agreement that no Injunctive Relief Claims, including claims for injunctive relief or related expenses, by Class Members against BBUSA arising out of the labeling of any of the Products, or any Individual Claims, including claims for injunctive relief or damages or expenses, will survive the approval of this Settlement Agreement.

4.10 The Parties agree that settlement would likely result in greater benefit to BBUSA and the Class Members than would further litigating the Class Action. Accordingly, as more fully described in Section 5 below, the Parties will submit this Settlement Agreement to the Court via a Joint Motion for Preliminary Approval of Proposed Settlement and will jointly marshal and present evidence to support that motion.

4.11 Plaintiffs and Class Counsel enter into this Settlement Agreement on behalf of the Class to terminate and settle all liability in relation to the Injunctive Relief Claims and the Individual Claims against BBUSA -- notwithstanding Plaintiffs' and Class Counsel's continuing belief in the merits of their Claims -- in recognition of (1) the existence of complex and contested issues of law and fact, (2) the risk, difficulty and uncertainty associated with the claims asserted in the Class Action, including the likelihood that the an adverse judgment could be awarded against Plaintiffs and for BBUSA, (3) the extent of BBUSA's alleged liability, (4) the likelihood that future proceedings will be unduly protracted and expensive if the case is not settled, (5) the magnitude of the benefits derived from the contemplated settlement considering the likely recovery to be obtained through further litigation, the fact that the Class Certification Order only certifies a Rule 23(b)(2) injunctive relief class, the expense thereof and the exposure associated therewith and (6) the determination by Plaintiffs and their counsel that the settlement is fair, reasonable, adequate and in the best interests of, and will substantially benefit, the Class.

4.12 BBUSA enters into this Settlement Agreement -- notwithstanding its continuing denial of liability for any injuries or relief whatsoever, including injunctive

relief -- to resolve all Injunctive Relief Claims and the Individual Claims and to avoid protracted litigation, without any admission of any liability or fault whatsoever.

4.13 It is the intention of the Parties and a condition of this Settlement Agreement, and the Parties specifically agree, that this settlement shall fully, completely, finally and conclusively resolve, compromise and release all of BBUSA's liability for the Injunctive Relief Claims and the Individual Claims. Without limiting the foregoing, it is also the intent of the Parties and a condition of this Settlement Agreement, and the Parties specifically agree, that, as of the Settlement Effective Date, (1) BBUSA shall be finally released from all liability for the Injunctive Relief Claims by, through or on behalf of each of the Class Members, (2) BBUSA shall be finally released from all liability for the Individual Claims, (3) the Class Action shall be dismissed with prejudice and with each Party to bear its/their own costs, (4) each of the Class Members shall be forever barred and enjoined from instituting, maintaining or prosecuting any action against BBUSA for injunctive, declaratory or other equitable relief relating to or arising out of the Injunctive Relief Claims or the same nucleus of operative facts as the Injunctive Relief Claims and (5) Plaintiffs shall be forever barred and enjoined from instituting, maintaining or prosecuting any action against BBUSA relating to or arising out of the Individual Claims or the same nucleus of operative facts as the Individual Claims.

4.14 To the extent approved by the Court, BBUSA agrees to pay the total sum of (US) \$325,000 to Class Counsel as consideration for the settlement in the form of attorneys' fees (the "Settlement Payment"). The Parties and their counsel will bear all other fees and costs incurred in relation to the litigation or the drafting, approval and implementation of the Settlement Agreement. Plaintiffs will file the Parties' motions seeking preliminary and final approval of the Settlement Agreement with the Court, which motions will not request or seek any amounts in excess of the total sum of (US) \$325,000 for any incentive payments to Plaintiffs and/or the payment of attorneys' fees and costs to Class Counsel. BBUSA agrees not to oppose any motion for attorneys' fees and costs that

does not exceed the (US) \$325,000 to which the Parties have already agreed. BBUSA also agrees not to oppose any request by Class Counsel to provide Plaintiffs compensation not to exceed (US) \$10,000 each, payable solely from the Settlement Payment, and that Plaintiffs shall be entitled to receive such compensation from the Settlement Payment to the extent awarded by the Court.

4.15 Within ten (10) business days of the Final Judgment and Order approving the Settlement Agreement and the Settlement Payment, BBUSA will deposit the Settlement Payment into a client trust account designated by Class Counsel.

4.16 It is the intent of the Parties and a condition of this Settlement Agreement that the Final Judgment and Order detailed in Section 7 be entered and be final and binding on all Parties and Class Members. The Parties agree to take all actions reasonably necessary and appropriate to fulfill and satisfy this intent and condition.

5. PRELIMINARY APPROVAL OF THE SETTLEMENT AGREEMENT

5.1 On or before December 10, 2019, this Settlement Agreement shall be signed by all Parties and, no later than December 13, 2019, the Parties shall submit this Settlement Agreement to the Court for preliminary approval. The Settlement Agreement shall be submitted by filing a Joint Motion for Preliminary Approval of Proposed Settlement signed by or on behalf of the Class, Plaintiffs and BBUSA, with a proposed form of order attached thereto that will include the Court's preliminary approval of the Settlement Agreement and a determination that the settlement is fair, reasonable and adequate.

5.2 At the preliminary approval hearing, BBUSA shall not object to the appointment of Plaintiffs as Class Representatives and the appointment of Ben F. Pierce Gore of Pratt & Associates and Keith M. Fleischmann and Joshua D. Glatter of Fleischman Bonner & Rocco LLP as Class Counsel.

6. **CLASS NOTICE**

6.1 Because the Class Certification Order in the Class Action certified only a Class for injunctive relief pursuant to Rule 23(b)(2), and does not certify a class with respect to monetary remedies or other equitable relief by any Class Member, the Parties agree that notice and opt-out rights do not apply and are not necessary. *See* Fed. R. Civil P. 23(c)(2)(A). *See also Kline v. Dymatize Enters., LLC*, No. 15-CV-2348-AJB-RBB, 2016 U.S. Dist. LEXIS 142774, at *17 (S.D. Cal. Oct. 13, 2016) (“When a class is certified under Rule 23(b)(2) and only provides for injunctive relief, no notice of class certification is required”). The Parties further agree that notice in this case would be cost prohibitive. In the event that the Court determines that any type of notice to the Class Members is necessary, the Parties will negotiate in good faith in an attempt to agree on a reasonable notice procedure for approval by the Court. In the event that the Court determines that any type of notice to the Class Members is necessary, should good faith negotiations regarding a reasonable notice procedure be unsuccessful, each Party shall have the unilateral right to withdraw from this Settlement Agreement, without prejudice, and the Settlement Agreement will have no force or effect and will be treated as if it never existed.

7. **FINAL APPROVAL AND EFFECT OF THE AGREEMENT**

7.1 Once the Court enters the Order of Preliminary Approval, the Parties shall proceed with due diligence to conduct the Final Approval Hearing as ordered by the Court.

7.2 Not later than thirty (30) days before the Final Approval Hearing, Class Counsel will file with the Court and serve on counsel for BBUSA a Motion for Final Approval of Class Action Settlement, a supporting memorandum of points and authorities and supporting declarations setting forth relief to the Class and to BBUSA consistent with the terms and conditions of this Settlement Agreement.

7.3 The effectiveness and enforceability of this Settlement Agreement is subject to and conditioned on (1) entry of a Final Judgment and Order granting final approval of the Settlement Agreement and (2) the Final Judgment and Order becoming

final after all periods for objection and appeal have expired. The Parties shall take all reasonable and necessary actions to obtain the Final Judgment and Order as promptly as practical.

7.4 This Settlement Agreement shall be the exclusive remedy with respect to any and all Injunctive Relief Claims against BBUSA and the Individual Claims against BBUSA. When the Final Judgment and Order is entered and becomes final, the Parties agree that each of the Class Members shall be barred from initiating, asserting, prosecuting or continuing to prosecute any Injunctive Relief Claims against BBUSA and that Plaintiffs shall be barred from initiating, asserting, prosecuting or continuing to prosecute the Individual Claims against BBUSA.

7.5 The Parties agree that, to the best of their knowledge, information and belief, the Settlement Agreement is made in good faith and in accordance with the laws of the United States of America and the State of California. The Parties agree to cooperate by providing affidavits and/or testimony concerning the circumstances and negotiation of the Settlement Agreement and attesting to the fact that it is a good faith settlement.

7.6 The Court shall retain jurisdiction over the Parties, the Class Action, the Settlement Agreement and the Final Judgment and Order solely for the purpose of administering, supervising, construing and enforcing the Settlement Agreement and the Final Judgment and Order.

7.7 Except as otherwise provided herein, and provided that the Final Judgment and Order is consistent with the terms and conditions of the Settlement Agreement, Plaintiffs, the Class, BBUSA and their respective counsel hereby waive any and all rights to appeal from the Final Judgment and Order -- including all rights to any post-judgment proceeding and appellate proceeding, such as a motion to vacate or set aside judgment, a motion for new trial and any extraordinary writ -- and the Judgment therefore will become final and non-appealable at the time that it is entered. The waiver of appeal does not include any waiver of the right to oppose any appeal, appellate proceedings or post-

judgment proceedings.

7.8 The Court shall have jurisdiction over any dispute that arises under the Settlement Agreement. If any dispute under the Settlement Agreement occurs, the Parties shall meet and confer in good faith to resolve the dispute without Court intervention. If the dispute cannot be resolved, the Parties shall submit the dispute to the Court for resolution.

8. RELEASE AND COVENANT NOT TO SUE

8.1 The Parties, and each of them, on behalf of themselves and their representatives, agents, successors and heirs, do hereby release and forever discharge each other Party and each of their past, present and future directors, officers, partners, owners, principals, employees, affiliates, agents, predecessors, successors, insurers, shareholders, clients and attorneys (hereafter collectively “Released Parties”) from any and all causes of action, suits, claims, liens, demands, judgments, indebtedness, costs, damages, obligations, attorneys’ fees (except as provided for in this Agreement), losses, claims, controversies, liabilities, demands and all other legal responsibilities in any form or nature, whether known or unknown, asserted or unasserted, under or pursuant to any statute, regulation, common law or equity, which have been brought or could have been brought, are currently pending or were pending, or are ever brought in the future (1) on behalf of the Class, for injunctive, declaratory or other equitable relief that arise out of or in any way relate, directly or indirectly, to the Injunctive Relief Claims prior to the Settlement Effective Date and/or (2) on behalf of Plaintiffs, that arise out of or in any way relate, directly or indirectly, to the Individual Claims prior to the Settlement Effective Date (collectively, the “Released Claims”). Nothing in this Agreement will be considered a waiver of any claims by Plaintiffs or Class Members that arise entirely after the Effective Date. Plaintiffs and Class Counsel expressly promise and warrant that they are not aware of any such claims at this time of this Settlement Agreement.

8.2 Upon the entry of the Final Judgment and Order following the Final Approval Hearing, all Class Members and each of their respective successors, assigns, legatees, heirs and personal representatives shall release and forever discharge BBUSA and each of its indemnitors, partners, parents or subsidiaries, and any of their present and former directors, officers, employees, agents, representatives, attorneys, accountants, and all persons acting by, through, under or in concert with them, from any and all manner of action, causes of action, claims, demands, rights, suits, obligations, debts, contracts, agreements, promises, liabilities, damages, charges, losses, costs, expenses and fees, of any nature whatsoever, known or unknown, in law or equity, fixed or contingent, for injunctive, declaratory or other equitable relief relating to or arising out of the Injunctive Relief Claims.

8.3 Upon the entry of the Final Judgment and Order following the Final Approval Hearing, Plaintiffs and each of their respective successors, assigns, legatees, heirs and personal representatives shall release and forever discharge BBUSA and each of its indemnitors, partners, parents or subsidiaries, and any of their present and former directors, officers, employees, agents, representatives, attorneys, accountants, and all persons acting by, through, under or in concert with them, from any and all manner of action, causes of action, claims, demands, rights, suits, obligations, debts, contracts, agreements, promises, liabilities, damages, charges, losses, costs, expenses and fees, of any nature whatsoever, known or unknown, in law or equity, fixed or contingent, relating to or arising out of the Individual Claims.

8.4 In addition, the Parties and each of their respective successors, assigns, legatees, heirs and personal representatives, expressly waive and relinquish, to the fullest extent permitted by law, the provisions, rights and benefits of section 1542 of the California Civil Code, and any other similar provision under federal or state law. Section 1542 provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

8.5 The Parties fully understand that they are relinquishing their rights to future claims based on facts that are not currently known to them. The Parties agree that, should the facts on which this Settlement Agreement is based turn out to be different than facts subsequently learned by the Parties or their counsel, this Settlement Agreement shall remain effective notwithstanding any such difference in facts.

9. TERMINATION OF AGREEMENT

9.1 The effectiveness and performance of this Settlement Agreement is expressly contingent on entry of an order preliminarily approving the Settlement Agreement and entry of a Final Judgment and Order approving the Settlement Agreement as written. The Settlement Agreement may, unless the Parties jointly agree to seek reconsideration of a ruling or to seek Court approval of a renegotiated settlement, be terminated by BBUSA or Plaintiffs on written notice provided that one or more of the following events occur (provided, however, that a Party whose willful conduct causes the event giving rise to the right to terminate shall not have a right to terminate the Settlement Agreement by reason of such event and further provided that copies of any written notice of termination shall be provided to the Court and filed in the record of the Class Action):

9.1.1 The Court requires notice to Class Members and, should good faith negotiations regarding a reasonable notice procedure as set forth in Section 8.1 prove unsuccessful, one of the Parties elects to withdraw from the Settlement Agreement as provided herein; or

9.1.2 The Court does not issue the Order of Preliminary Approval in a form mutually acceptable to Class Counsel and BBUSA; or

9.13 The Court does not enter the Final Judgment and Order in a form mutually acceptable to Class Counsel and BBUSA; or

9.14 The Final Judgment and Order does not become final.

9.2 In the event of termination of the Settlement Agreement, (1) the Settlement Agreement shall be null and void and have no force and effect and, except as otherwise provided in this Settlement Agreement, no Party shall be bound by its terms, (2) all Parties shall be restored to their respective positions as they were immediately before execution of the Settlement Agreement; (3) the Parties shall jointly petition the Court to revert the Class Action to its status before the execution of the Settlement Agreement as if the Motion for Preliminary Approval and all subsequent pleadings and proceedings had not been filed and as if no orders relating to the Settlement Agreement had been entered and (4) all negotiations relating to the Settlement Agreement and the terms and conditions of the Settlement Agreement and the fact of the Settlement Agreement itself will not be admissible nor will be introduced for any purpose in the resumed litigation.

10. ADDITIONAL OBLIGATIONS OF THE PARTIES

10.1 Plaintiffs, BBUSA and their respective counsel each represents and warrants that, as applicable:

10.1.1 Plaintiffs, Class Counsel and BBUSA have not been notified of any pending lawsuit, claim or legal action relating to the Products other than the Class Action;

10.1.2 Plaintiffs, Class Counsel and BBUSA have not been notified of any lawsuit, claim or legal action against BBUSA relating to the labeling of the Products brought or made by or on behalf of any person and/or entity who is not a Class Member;

10.1.3 Class Counsel and BBUSA have exercised all reasonable due diligence in ascertaining that their representations in this

Settlement Agreement are true and accurate and that Class Counsel and BBUSA shall have, until the Settlement Effective Date, a continuing obligation to ensure that their representations are accurate;

10.14 Class Counsel and BBUSA shall notify each other within a reasonable time after learning that any of the representations in this Settlement Agreement are or become inaccurate.

10.2 Class Counsel further covenants, represents and warrants to BBUSA that:

10.21 Prior to the Final Approval Hearing, Class Counsel shall have explained to Plaintiffs the terms and effect of this Settlement Agreement;

10.22 Class Counsel has not made and will not make any undisclosed payment or promise to Plaintiffs or any other class representative;

10.23 Class Counsel has read and reviewed the Settlement Agreement and believes that the settlement embodied therein is in the best interests of each of its clients;

10.24 Class Counsel will strongly recommend to Plaintiffs that they settle their claims under the terms of the Settlement Agreement; and

10.25 Plaintiffs as the named plaintiffs have full authority to enter into and execute this Settlement Agreement and all related documents for, and on behalf of and to bind, themselves.

10.3 The Parties shall use their best efforts to conclude the Settlement Agreement and obtain the Final Judgment and Order. The Parties agree that it is essential that the Settlement Agreement be prosecuted to a successful conclusion in accordance with all applicable provisions of law and in the exercise of good faith on the part of the Parties. Inherent in accomplishing this mutual goal is the understanding that the Parties assume mutual obligations to each other to assist and cooperate in the effectuation of the

Settlement Agreement in accordance with its terms and all applicable legal requirements. To that end, the Parties are expressly obliged to maintain the integrity and goals of the Settlement Agreement in all further proceedings in the Class Action and to take all appropriate actions to assure the jurisdiction of the Court in this and all subsequent proceedings. The Settlement Agreement is intended to be a final and binding resolution of all liability for the Injunctive Relief Claims, the Individual Claims and the Class Action.

11. MISCELLANEOUS PROVISIONS

11.1 The Parties shall reasonably cooperate with each other and shall use their reasonable best efforts to obtain the Court's approval of this Settlement Agreement and all of its terms. Each Party, upon the request of any other Party, agrees to perform such further acts and to execute and deliver such other documents as are reasonably necessary to carry out the provisions of this Settlement Agreement.

11.2 Neither this Settlement Agreement nor the settlement contemplated thereby, nor any proceeding taken hereunder, shall be construed as or deemed to be evidence of any fact or an admission or concession of any liability or wrongdoing whatsoever. Any wrongdoing or liability is expressly denied by BBUSA. The Class Members expressly deny any lack of merit to their claims. None of the provisions of this Settlement Agreement, nor evidence of any negotiations or proceedings in pursuance of the compromise and settlement herein, shall be offered or received in evidence in the Class Action or any other action or proceeding as an admission or concession of liability or wrongdoing of any nature on the part of BBUSA, or as an admission of any fact or presumption on the part of the Class, or to establish jurisdiction or venue or to create a waiver of any claim or affirmative defense. The provisions of the Settlement Agreement may be offered or received into evidence solely to enforce the terms and provisions of the Settlement Agreement and shall not be offered in evidence or used in the Class Action or any other action or proceeding for any other purpose, including in support of the existence, certification or maintenance of any purported class. The Parties specifically acknowledge,

agree and admit that this Settlement Agreement, and all related motions and pleadings, shall be considered an offer to compromise within the meaning of Federal Rule of Evidence 408 and any equivalent rule of evidence of any state or federal court. This Section 11.2 shall survive the termination of the Settlement Agreement.

11.3 This Settlement Agreement constitutes the entire agreement among the Parties and may not be modified, amended or waived except by a written instrument duly executed by all the Parties or their authorized representatives. Each Party hereto represents and warrants that he, she or it is not relying on any representation that is not specifically included in this Settlement Agreement. The Settlement Agreement supersedes any previous agreements or understandings between or among the Parties relating to the Class Action or the subject matter of the Settlement Agreement. Any failure by any Party to insist upon the strict performance by the other party of any of the provisions of this Settlement Agreement shall not be deemed a waiver of future performance of the same provisions or of any of the other provisions of this Settlement Agreement, and such party, notwithstanding such failure, shall have the right thereafter to insist upon the specific performance of any and all of the provisions of this Settlement Agreement.

11.4 The Settlement Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original but all of which together shall constitute one and the same instrument. This Settlement Agreement is valid and binding if signed by Defendants' authorized representative(s) and at least one authorized representative for Plaintiffs. Any Party may execute this Settlement Agreement by causing its counsel to sign on the designated signature block below and transmitting that signature page via facsimile or email to counsel for the other party. Any signature made and transmitted by facsimile or email for the purpose of executing this Settlement Agreement shall be deemed an original signature for purposes of this Settlement Agreement and shall be binding upon

the party whose counsel transmits the signature page by facsimile or email.

11.5 The terms and conditions of the Settlement Agreement shall bind and inure to the benefit of the heirs, executors, administrators, predecessors in interest, successors in interest, legal representatives and assigns of all Parties.

11.6 Except with respect to any waiver provided pursuant to Section 7.7, any waiver by a Party of any term, condition, covenant or breach of the Settlement Agreement shall not be deemed to be a continuing waiver.

11.7 The Parties agree and specifically acknowledge that the terms and conditions of this Settlement Agreement are the result of arm's length negotiations between the Parties or their counsel. None of the Parties shall be considered to be the drafter of the Settlement Agreement or any provision of the Settlement Agreement for the purpose of any statute, jurisprudential rule or rule of contractual interpretation or construction that might cause any provision to be construed against the drafter.

11.8 The captions or headings of the sections and paragraphs of this Settlement Agreement have been inserted for convenience of reference only and shall have no effect upon the construction or interpretation of any part of this Settlement Agreement.

11.9 For purposes of this Settlement Agreement, the use of the singular form of any word includes the plural and vice versa.

11.10 The Parties have agreed that the validity and interpretation of this Settlement Agreement and any of the terms or provisions hereof, as well as the rights and duties of the Parties thereunder, shall be governed solely by the laws of the State of California, without giving effect to any conflict of laws principles, and that the exclusive forum for any claim arising out of or relating to interpreting or enforcing the Settlement Agreement shall be the United States District Court for the Northern District of California.

11.11 Any notice, request, instruction or other document to be given by any Party to any other Party shall be in writing and delivered personally, sent by registered or certified mail, postage prepaid, or sent by private, overnight delivery carrier operating in

the United States of America, providing a receipt with evidence of delivery, as follows:

11.12 If to BBUSA, to:

Mark C. Goodman
Anne Kelts Assayag
Baker & McKenzie LLP
Two Embarcadero Center, 11th Floor
San Francisco, CA 94111
mark.goodman@bakermckenzie.com
anne.assayag@bakermckenzie.com

11.13 If to Class Counsel, the Class, or Plaintiffs, to:

Ben F. Pierce Gore
Pratt & Associates
634 North Santa Cruz Avenue
Suite 204
Los Gatos, CA 95030
pgore@prattattorneys.com

Keith M. Fleischman
Joshua D. Glatte
Fleischman Bonner & Rocco LLP
81 Main Street, Suite 515
White Plains, NY 10601
kfleischman@fbrllp.com
jglatte@fbrllp.com

The Parties may change their respective recipients and addresses for notice by giving written notice of such change to the other Parties pursuant to this Section.

11.14 In the event that one or more of the provisions of this Settlement Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of the Settlement Agreement, but only if the Parties mutually elect to proceed as if such invalid, illegal or unenforceable provision had never been included in the Settlement Agreement.

11.15 By entering into this Settlement Agreement, each Party represents and warrants that he, she or it has relied on his, her or its own knowledge and judgment and

the advice of counsel. It is expressly understood, agreed and warranted that, in entering into this Settlement Agreement, no Party has relied on any representation, warranty, advice or action by any other Party except as specifically set forth herein.

11.16 Except as provided herein or as may be required by law or in connection with Court approval of the Settlement Agreement or as otherwise agreed in writing by the Parties, the Parties shall keep the existence of the settlement and the Settlement Agreement in confidence.

11.17 The Parties will not publicize the settlement of the case or the Settlement Agreement but their counsel shall be permitted to note in marketing materials their role in serving as counsel for the respective Parties and the fact of settlement. If any Party or attorney is contacted by a member of the press, they will limit their comments to “the parties were able to reach a mutually acceptable resolution of this matter and BBUSA denies any wrongdoing.”

ACCEPTED AND AGREED

For Plaintiffs and the Class:

Plaintiff Alex Ang

Date

Plaintiff Lynne Streit

Date

For BBUSA:

Claudia Coscia

Date

Deputy General Counsel

Counsel for Plaintiffs:

Ben F. Pierce Gore (SBN 128515)
PRATT & ASSOCIATES
634 North Santa Cruz Avenue
Suite 204
Los Gatos, CA 95030
Telephone: (408) 806-4600
Fax: (408) 369-0752
pgore@prattattorneys.com

Date

Counsel for BBUSA:



Mark C. Goodman (Bar No. 154692)
BAKER & MCKENZIE LLP
Two Embarcadero Center, Suite 1100
San Francisco, California 94111
Telephone: (415) 576-3000
Facsimile: (415) 576-3099
mark.goodman@bakermckenzie.com

February 26, 2020

Date

Counsel for Plaintiffs:

DocuSigned by:



2/19/2020

Ben F. Pierce Gore (SBN 128515)
PRATT & ASSOCIATES
634 North Santa Cruz Avenue
Suite 204
Los Gatos, CA 95030
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Fax: (408) 369-0752
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Date**Counsel for BBUSA:**

Mark C. Goodman (Bar No. 154692)
BAKER & MCKENZIE LLP
Two Embarcadero Center, Suite 1100
San Francisco, California 94111
Telephone: (415) 576-3000
Facsimile: (415) 576-3099
mark.goodman@bakermckenzie.com

Date

the advice of counsel. It is expressly understood, agreed and warranted that, in entering into this Settlement Agreement, no Party has relied on any representation, warranty, advice or action by any other Party except as specifically set forth herein.

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ACCEPTED AND AGREED

For Plaintiffs and the Class:

Plaintiff Alex Ang

Date

Plaintiff Lynne Streit

Date

For BBUSA:



Claudia Coscia

2-20-2020
Date

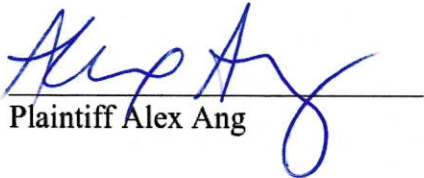
advice or action by any other Party except as specifically set forth herein.

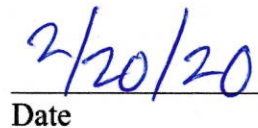
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ACCEPTED AND AGREED

For Plaintiffs and the Class:


Plaintiff Alex Ang


Date

Plaintiff Lynne Streit

Date

For BBUSA:

Claudia Coscia
Deputy General Counsel

Date

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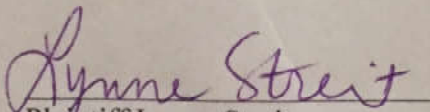
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ACCEPTED AND AGREED

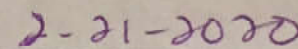
For Plaintiffs and the Class:

Plaintiff Alex Ang

Date



Plaintiff Lynne Streit



Date

For BBUSA:

Claudia Coscia
Deputy General Counsel

Date

EXHIBIT B

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8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA
10 OAKLAND DIVISION

11 ALEX ANG and LYNN STREIT,
12 individually and on behalf of all others
13 similarly situated,

14 Plaintiffs,

15 v.

16 BIMBO BAKERIES USA, INC.,

17 Defendant.
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Case No. 3:13-CV-1196-HSG

**[PROPOSED] ORDER GRANTING
PRELIMINARY APPROVAL OF PROPOSED
CLASS ACTION SETTLEMENT**

Judge: Hon. Haywood S. Gilliam, Jr.
Action Filed: March 18, 2013

1 The parties in this action have reached a settlement that, if approved, would entirely resolve
2 this putative class action. Together, plaintiffs Alex Ang and Lynn Streit (“Plaintiffs”) and Defendant
3 Bimbo Bakeries USA, Inc. (collectively, the “Parties”) have filed a Renewed Joint Motion for
4 Preliminary Approval of Proposed Class Action Settlement pursuant to Federal Rule of Civil
5 Procedure 23(e). (*See* ECF No. 235.) The Parties have requested that the Court preliminarily approve
6 the settlement and schedule a final approval hearing. Having reviewed the Parties’ submissions, the
7 Court **GRANTS** the Parties’ motion and **ORDERS** that:

8 1. For purposes of this Order, the Court incorporates by reference the definitions in the
9 Revised Settlement Agreement and all terms defined herein shall have the same meaning as set forth
10 in the Settlement Agreement. (*See* ECF No. 235 (Glatter Decl., Ex. A).)

11 2. The Court preliminarily approves the proposed Class Action Settlement Agreement
12 (the “Settlement Agreement”) and finds that, for the reasons set forth in the Parties’ Joint Motion for
13 Preliminary Approval of Settlement and Renewed Joint Motion for Preliminary Approval of
14 Settlement, the Settlement Agreement appears to be proper, to fall within the range of reasonableness
15 and to be the product of arm’s-length and non-collusive negotiations by capable and experienced
16 counsel, with full knowledge of the facts, the law, and the risks inherent in litigating the Action, and
17 with the assistance of a qualified mediator.

18 3. The Court, in its discretion, finds that the Parties’ Proposed Notice to the Class set
19 forth in Section II(B)(1) of the Renewed Joint Motion for Preliminary Approval of Settlement is
20 reasonable and adequate under the circumstances with respect to this Fed. R. Civ. P. 23(b)(2)
21 settlement and satisfies the policies reflected in Rule 23(c)(2) and *Campbell v. Facebook, Inc.*, 951 F.3d
22 1106, 1127 & n.15 (9th Cir. 2020).

23 4. The Parties must file their Notice of Motion for Final Approval and Memorandum of
24 Points and Authorities in Support of Motion for Final Approval on or before _____.

25 5. Class Counsel must file its application for fees, costs and litigation expenses not to
26 exceed \$325,000 USD (the “Settlement Payment”), including a class representative incentive award
27 not to exceed \$10,000 USD for each class representative to be paid exclusively from Settlement
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1 Payment, on or before _____.

2 6. Pursuant to Federal Rule of Civil Procedure 23(e), the Final Approval Hearing will be
3 held before the Hon. Haywood S. Gilliam, Jr. on _____, at 2:30 p.m. in Courtroom 2 at
4 1301 Clay Street, Oakland, California 94612, to consider the fairness, adequacy and reasonableness of
5 the proposed Settlement Agreement preliminarily approved by this Order of Preliminary Approval,
6 and to consider the application of Class Counsel for an award of reasonable attorneys' fees, litigation
7 expenses and a class representative incentive award.

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9 IT IS SO ORDERED.

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11 Dated: _____

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13 _____
14 HON. HAYWOOD S. GILLIAM, JR.
15 United States District Judge
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