

IN THE CIRCUIT COURT
THIRD JUDICIAL CIRCUIT
MADISON COUNTY, ILLINOIS

FILED
JUL 29 2022
CLERK OF CIRCUIT COURT #91
THIRD JUDICIAL CIRCUIT
MADISON COUNTY, ILLINOIS

**BOBBIE GRAYER, Individually and on behalf
of others similarly situated,**

Plaintiff,

v.

SARA LEE FROZEN BAKERY, LLC,

Defendant.

No. 2022LA000002

**ORDER GRANTING PLAINTIFF'S UNCONTESTED MOTION FOR
PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

Plaintiff Bobbie Grayer ("Plaintiff" or "Class Representative") has moved the Court for preliminary approval of a proposed class action settlement with Sara Lee Frozen Bakery, LLC ("Sara Lee" or "Defendant"), the terms and conditions of which are set forth in the Settlement Agreement filed with the Court on July 5, 2022 ("Settlement Agreement").

This case concerns the labeling, advertising, and selling of Sara Lee Products bearing the label "All Butter Pound Cake" (the Product). Plaintiff contends the Products are mislabeled.

Plaintiff contends that, by labeling the Products as "All Butter Pound Cake." Defendant caused consumers to purchase the Products instead of competing products, to pay a premium for the Products, or to pay more for the Products than they otherwise would have, had the Products not been labeled "All Butter Pound Cake." Plaintiff seeks to recover monetary and injunctive relief, on behalf of a class of all Persons who purchased, for personal use and not for the purposes of resale, the Products between April 27, 2017, and the Effective Date of this Order.

Defendant denies that there is any factual or legal basis for Plaintiff's allegations. Defendant contends that the labeling of the Products was truthful and non-misleading, and that consumers did not pay a "premium" for the Products as the result of any misrepresentations. Defendant, therefore, denies any liability. Defendant also denies that Plaintiff or any other members of the Settlement Class have suffered injury or are entitled to monetary or other relief. Defendant finally denies that this case should be certified as a class action, except for purposes of settlement. In that regard, Defendant specifically denies that there are questions of fact of law common to the class, that the Class Representative is typical of consumers in the United States, and that a settlement class is an appropriate method for fairly and efficiently adjudicating the controversy; however, in the interest of settling, Defendant does not oppose Plaintiff's request to certify the Settlement Class.

On April 27, 2021, Plaintiff commenced a proposed class action in the Illinois Circuit Court of Cook County, County Department, Chancery Division (Case No. 2021CH02035) (the "Cook County Action") in connection with Sara Lee's labeling and marketing of its All Butter Pound Cake. On April 28, 2021, Plaintiff filed a motion for class certification. On October 14, 2021, the Parties participated in a day-long mediation session with Hon. Wayne Andersen (Ret.). The Parties were unable to reach an agreement but participated in extensive arm's length settlement negotiations (through Mediator Andersen) in the following weeks. On December 13, 2021, the Parties reached an agreement on the material terms of the Settlement under the auspices of Mediator Andersen and entered into a Memorandum of Understanding. On November 22, 2021, Plaintiff moved to voluntarily dismiss the Cook County Action, which the Court granted on November 23, 2021. On January 4, 2022, Plaintiff filed the above-titled Action in this Court. In

the following weeks, the Parties finalized and executed the Settlement Agreement of which the Parties hereby seek preliminary approval.

The Class Representatives have moved the Court for preliminary approval of a proposed class action settlement with Defendant, the terms and conditions of which are set forth in the Settlement Agreement filed with the Court on July 5, 2022. As noted, the Settlement was negotiated with the assistance of Hon. Wayne Anderson (Ret).

The terms of the Settlement are summarized in the proposed Long Form Notice and Summary Notice to Settlement Class Members, which are attached as Exhibits 2 and 4 to the Settlement Agreement. In brief, Defendant has agreed to implement marketing reforms to ensure they will accurately market, advertise, and label Sara Lee Frozen Bakery Products.

In addition, members of the Settlement Class may submit a Claim Form for Settlement Benefit payments as outlined in Exhibit 1 to the Settlement Agreement:

- Without Proof of Purchase. Settlement Class Members who do not have Proof of Purchase may recover up to one dollar and zero cents (\$1.00) per Product purchased during the Class Period, up to five purchases, for a maximum potential recovery of five dollars and zero cents (\$5.00) and a minimum benefit of three dollars and zero cents (\$3.00).
- With Proof of Purchase. Settlement Class Members who provide a valid Proof of Purchase may recover up to one dollar and zero cents (\$1.00) per Product purchased during the Class Period, up to twenty purchases, for a maximum potential recovery of twenty dollars and zero cents (\$20.00) and a minimum benefit of three dollars and zero cents (\$3.00).

Settlement Class Members residing in the same Household (i.e., the same mailing address,

same payment account, or other evidence of sharing a residence) who each submit a Claim Form shall only be entitled to a collective maximum payment of five dollars and zero cents (\$5.00) or twenty dollars and zero cents (\$20.00) per Household, depending on whether valid Proof of Purchase is submitted. If one or more Settlement Class Members from the same Household submit Claim Forms, the Settlement Administrator shall only pay the recovery entitled to from the first submitted valid and timely Claim in the Household.

If the total amount of all valid Claims exceeds the Settlement Amount of one-million-dollars and zero cents (\$1,000,000.00), then the Settlement Benefit payments payable to each Claimant shall be proportionately reduced, such that Defendant's maximum liability for valid Claims will not exceed the Settlement Amount in the aggregate.

As part of the Settlement, Plaintiff's attorneys may apply to this Court to award them up to four-hundred-thousand-dollars and zero cents (\$400,000.00) from Defendant to pay their attorneys' fees, costs (including court costs), expenses, and disbursements incurred by them and their experts, staff, and consultants in connection with this action. Plaintiff's attorneys may also apply to this Court for payment from Defendant to the Class Representative for up to two-thousand-five-hundred dollars and zero cents (\$2,500.00) for the Class Representative. Such amounts must be approved by the Court, and the Court will defer any ruling on the appropriateness of such awards until the Final Approval Hearing.

Having considered all matters submitted to it at the hearing on the motion and otherwise, including the complete record of this action, and good cause appearing therefore, the Court grants preliminary approval and hereby finds and concludes as follows:

1. The capitalized terms used in this Order shall have the same meaning as defined in the Settlement Agreement except as otherwise expressly provided.

2. The Court preliminarily approves the Settlement Agreement as within the range of possible final approval and as meriting submission to the Settlement Class for its consideration. The parties' Agreement was reached as a result of extensive arm's length negotiations between the parties and their counsel and involved a well-respected and experienced mediator. Through independent research conducted by Plaintiff and Plaintiff's counsel relating to this settlement, Plaintiff and Plaintiff's counsel had sufficient information to evaluate the strengths and weaknesses of the case and to conduct informed settlement discussions.

3. For purposes of the settlement only, the Court provisionally certifies the Settlement Class, which consists of all Persons who, between April 27, 2017 and the present day, purchased any Product in the United States, such purchases not made for purposes of resale or commercial use. Specifically excluded from the Settlement Class are: (a) the Court, counsel to the Parties, Mediator Andersen, and their employees, legal representatives, heirs, successors, assigns, or any members of their immediate family; (b) any governmental entity; (c) Sara Lee, any entity in which Sara Lee has a controlling interest, any of Sara Lee's subsidiaries, parents, affiliates, and officers, directors, employees, legal representatives, heirs, successors, or assigns, or any member of their immediate family; and (d) all Persons who timely and properly exclude themselves from the Settlement Class.

4. The Court preliminarily finds and concludes, solely for purposes of considering this Settlement, that the requirements of 735 ILCS 5/Sec. 2-801, et. seq. are conditionally satisfied for certification of the Settlement Class to pursue claims for unjust enrichment and under the consumer protection laws of the United States. Solely for the purpose of considering this Settlement, the Court finds Plaintiff has met the requirements of 735 ILCS 5/Sec. 2-801, et. seq. for the reasons set forth in Plaintiff's Unopposed Motion for Preliminary Approval of Class Action Settlement, as

well as for the reasons that follow.

- a. The Settlement Class Members are too numerous to be joined in a single action;
- b. There are questions of fact or law common to the class, and the common questions predominate over any questions affecting only individual members;
- c. The Class Representatives are typical of consumers around the country in that they were all exposed to identical Product labels, which are alleged to have been false and deceptive for identical reasons, and, thus, their claims for unjust enrichment and violations of consumer protection statutes are such that they will fairly and adequately protect the interests of the class; and
- d. A settlement class is an appropriate method for fairly and efficiently adjudicating the controversy and is superior to alternative means of resolving the claims and disputes at issue in this litigation.

5. The Court further notes that Plaintiff's live pleading sets forth causes of action for a nationwide class; that Defendant does not oppose Plaintiff's request to certify a nationwide Settlement Class for the purpose of this Settlement; and that, in the event final approval of the Settlement Agreement is denied, or a mandate is issued reversing an award of final approval, or the Settlement Agreement is otherwise terminated, the certification of the Settlement Class will be void; and that, in such event, Defendant does not waive, and instead expressly reserve, all rights to defend this Action and shall not be precluded from challenging class certification in further proceedings in the Action or in any other action.

6. The Court conditionally designates the law firms of Steckler Wayne Cherry & Love and _____ as Class Counsel and Bobbie Grayer as Class Representative for purposes of this Settlement. The Court preliminarily finds that the Class Representative and Class Counsel fairly and adequately represent and protect the interests of the absent Settlement Class Members. The Court designates, and approves, Kroll Business Services to serve as Settlement Administrator.

7. Because the Settlement Agreement is within the range of reasonableness and possible final approval, notice shall be provided to the Settlement Class as described in Section V of the Settlement Agreement.

- a. The Notice Plan consists of the Long Form Notice and the Summary Notice, in substantially the forms attached hereto as Exhibits 2 and 4 of the Settlement Agreement, developed by the Settlement Administrator to notify the Settlement Class of the Settlement and to command the Class Members' attention about their rights under the Settlement.
- b. At least fourteen (14) business days after entry of this Preliminary Approval Order, the Settlement Administrator will establish the Settlement Website, which shall contain the Long Form Notice in both downloadable PDF format and HTML format with a clickable table of contents; answers to frequently asked questions; a contact information page that includes the address for the Settlement Administrator and addresses and telephone numbers for Class Counsel; the Settlement Agreement; the signed Preliminary Approval Order and publicly filed motion papers and accompanying

papers; a downloadable and online version of the Claim Form. The Settlement Administrator shall add to the Settlement Website all other material filings by the parties or the Court regarding the Settlement, including Plaintiff's application for attorneys' fees, costs, expenses, and/or payment to the Class Representative, the motion for final approval, and any orders with respect to such applications and motions.

- c. The Settlement Administrator shall initiate the process of providing the online notices on websites as set forth in the Notice Plan, so that overall notice of the Settlement (including the Summary Notice) is reasonably calculated to apprise the Settlement Class Members of the Settlement.
- d. The Settlement Administrator shall issue the Summary Notice as further described in the Notice Plan.
- e. The Settlement Administrator also will receive and process Claim Forms. Defendants alone will pay the notice and administration costs associated with the Settlement.

8. Prior to the Final Approval Hearing, the following deadlines shall apply:

| | |
|---------------------------------|---|
| Notice Date Commencement | [14 days after Preliminary Approval Order] |
| Claim Form Deadline | [60 days after the Notice Date] |
| Opt-Out Deadline | [60 days after the Notice Date] |
| Objection Deadline | [60 days after the Notice Date] |

9. A Final Approval Hearing shall be held before this Court at ^{Oct 20, 2022 @ 10:00am} in the Third Judicial Circuit, Madison County, Illinois, to address: (a) whether the proposed Settlement should be finally approved as fair, reasonable and adequate, and whether the Final Approval Order should be entered, and (b) whether Class Counsel's application for attorneys' fees, costs, and a payment to the Class Representative should be approved.

10. The Court approves, as to form and content, the Claim Form and Notices that are substantially similar to the forms attached as Exhibits 1, 2, and 4 to the Settlement Agreement. The Claim Form and all the Notices are written in plain English and are easy to comprehend. The Parties shall have discretion to jointly make non-material minor revisions to the Claim Form and Notices before publishing. Responsibility for settlement administration, including, but not limited to, notice and related procedures, shall be performed by the Settlement Administrator, subject to the oversight of the Parties and this Court as described in the Settlement Agreement.

11. The Court finds that the Parties' plan for providing notice to the Settlement Class is reasonably calculated to provide notice to the Settlement Class of the pendency of the Action, certification of the Settlement Class, the terms of the Settlement Agreement, and the Final Approval hearing, and complies fully with the requirements of due process, 735 ILCS 5/Sec. 2-801, et. seq., and any other applicable law. The Parties and the Settlement Administrator shall comply with the notice plan as set forth in the Settlement Agreement.

12. Any member of the Settlement Class who desires to be excluded from the Settlement Class, and therefore not be bound by the terms of the Settlement Agreement, must submit a Request for Exclusion to the Settlement Administrator pursuant to the instructions set forth in the Long Form Notice. The Request for Exclusion must be submitted online by no later than [60 days after the Notice Date] or, if mailed to the Settlement Administrator, must be

postmarked on or before [60 days after the Notice Date]. No one shall be permitted to exercise any exclusion rights on behalf of any other Person, whether as an agent or representative of another or otherwise, except upon proof of a legal power of attorney, conservatorship, trusteeship, or other legal authorization and no one may exclude other Persons within the Settlement Class as a group, class, or in the aggregate.

13. No later than fourteen (14) days before the Final Approval Hearing, the Settlement Administrator shall prepare and deliver to the Parties a list of the names of the Persons who, pursuant to the Class Notice, described herein, have excluded themselves from the Settlement Class in a valid and timely manner. Plaintiff's counsel shall file that list with the Court. The Court retains jurisdiction to resolve any disputed exclusion requests.

14. Any member of the Settlement Class who elects to be excluded shall not receive any benefits of the Settlement, shall not be bound by the terms of the Settlement Agreement, and shall have no standing to object to the Settlement or intervene in the Action. If the Settlement is granted final approval, all Settlement Class Members who do not timely submit a valid request for exclusion will be bound by the Final Approval Order and final judgment and enjoined from bringing or prosecuting any action relating to the released claims, including claims related to the sell-through of existing stock, as defined in the Settlement Agreement.

15. Any Settlement Class Member who does not submit a valid and timely request for exclusion may submit an objection to the Settlement Agreement. The written objection must satisfy the requirement described in the Long Form Notice. An objection must be electronically filed or postmarked no later than [60 days after the Notice Date], and served on all Parties, or it will be rejected.

16. Any Settlement Class Member shall have the right to appear and be heard at the

Final Approval Hearing, either personally or through an attorney retained at the Settlement Class Member's own expense. However, if the Settlement Class Member wishes to object to the Settlement at the Final Approval Hearing (either personally or through counsel), the Settlement Class Member must submit a written objection as set forth in the prior paragraph of this Order. The Parties shall have the right to respond to any such objection no later than seven (7) days prior to the Final Approval Hearing.

17. Plaintiffs shall file their motion for final approval and class representative payment no later than thirty-five (35) days prior to the Final Approval Hearing and their motion for an award of attorneys' fees, costs, and expenses no later than thirty-five (35) days prior to the Final Approval Hearing and the reply in support of that motion and responses to any objections and requests to intervene no later than seven (7) days prior to the Final Approval Hearing. Those motions and all supporting documentation shall simultaneously be posted to the Settlement Website.

18. In the event that the proposed Settlement is not finally approved by the Court, finally approved but reversed on appeal, or in the event that the Settlement Agreement becomes null and void pursuant to its terms, this Preliminary Approval Order and all orders entered in connection herewith (including any order amending the petition) shall become null and void, shall be of no further force and effect, and shall not be used or referred to for any purposes whatsoever in this Action or in any other case or controversy; in such event the Settlement Agreement and all negotiations and proceedings directly related thereto shall be deemed to be without prejudice to the rights of any and all of the Parties, who shall be restored to their respective positions as of the date and time immediately preceding the execution of the Settlement Agreement.

19. This Order shall not be construed as an admission or concession by Defendant of

the truth of any allegations made by the Plaintiff or of liability or fault of any kind.

20. The Court may, for good cause, extend any of the deadlines set forth in this Order without further notice to the Settlement Class Members. The Final Approval Hearing may, from time to time and without further notice to the Settlement Class Members, be continued by Order of the Court.

IT IS SO ORDERED this 20th day of July, 2022.

The Honorable 