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FILED
Superior Court of California
County of Los Angeles
06/26/2025
David W. Slayton, Executive Officer / Clerk of Court
By: L. M Greené Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES – UNLIMITED CIVIL

JENNIFER GOODWIN, Individually and On Behalf of Others Similarly Situated,

Plaintiff,

v.

WHOLE FOODS MARKET, INC.; MRS. GOOCH'S NATURAL FOOD MARKETS, INC.; WHOLE FOODS MARKET CALIFORNIA, INC.,

Defendants.

Case No.: 21STCV40456

~~[PROPOSE~~D] **AMENDED ORDER (1) CONDITIONALLY CERTIFYING A SETTLEMENT CLASS, (2) PRELIMINARILY APPROVING CLASS ACTION SETTLEMENT, (3) APPROVING NOTICE PLAN, AND (4) SCHEDULING FINAL APPROVAL HEARING**

Assigned for all purposes to:
Hon. Carolyn B. Kuhl

Department: 12

Action Filed: November 3, 2021
Trial Date: None

Upon review and consideration of Plaintiff's unopposed Motion for Preliminary Approval of Class Action Settlement and Certification of Settlement Class, including the Settling Parties' proposed First Amended Settlement Agreement and Release and the Addendum to First Amended Settlement Agreement and Release (the "Agreement") and all exhibits thereto, and the arguments of counsel, and having been fully advised in the premises, it is HEREBY ORDERED, ADJUDGED and DECREED as follows:

1. **Settlement Terms**. Unless otherwise defined herein, all capitalized terms in this Order shall have the meanings ascribed to them in the Agreement.

2. **Jurisdiction**. The Court has jurisdiction over the subject matter of the litigation, the Settling Parties, and all Settlement Class Members.

3. **Scope of Settlement.** The Agreement, if finally approved, would resolve all Released Claims against the Released Parties. The Released Claims mean any and all claims, demands, rights, liabilities, suits, or causes of action, known or unknown, as of the Effective Date, that were or could have been asserted in the Action based upon, arising out of, or reasonably relating to, the claims in the Action including the amount of empty space within the Product's canister. Excluded from Released Claims are any and all claims for personal injury and/or wrongful death. The Released Parties means Mrs. Gooch's Natural Food Markets, Inc. ("Mrs. Gooch's"), Whole Foods Markets California, Inc. ("WFM California"),[1] their affiliated Whole Foods Market entities, and all of their current or former owners, affiliates, members, parent companies, shareholders, customers, partners, suppliers, manufacturers, co-manufacturers, contractors, subcontractors, plants, predecessors, assignees, subsidiaries, and any person or entity acting by their authority or on their behalf, including but not limited to agents, managers, employees, heirs, executors, administrators, assigns, successors in interest, officers, directors, attorneys, insurers and indemnitors.

4. **Preliminary Approval of Proposed Settlement.** The Court has conducted a preliminary evaluation of the Settlement as set forth in the Agreement, and based on its preliminary

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[1] Together, Mrs. Gooch's and WFM California are referred to herein as the "Defendants."

evaluation, the Court finds that: (a) the Settlement is fair, reasonable, adequate and within the range of possible approval; (b) the Settlement has been negotiated in good faith and at arm's length between experienced attorneys familiar with the legal and factual issues of this case; (c) the forms of notice of the material terms of the Settlement (Exhibits A, B(1) and B(2), C, and D to the Agreement) provides due and sufficient notice to Settlement Class Members and fully satisfies the requirements of due process and Cal. R. 3.766(d); and (d) the proposed notice plan is the best notice practicable under the circumstances. Therefore, the Court grants preliminary approval of the Settlement.

5. **Class Certification for Settlement Purposes Only.** Pursuant to Cal. Civ. Proc. Code § 382, the Court conditionally certifies for purposes of this Settlement only, the following Settlement Class:

> All persons who purchased one or more of the Product[2] from Whole Foods Market in California or, if purchased remotely (such as online), while present in California between November 3, 2017, and March 13, 2025.
>
> Excluded from this definition are Defendants, as well as their affiliates, employees, officers, and directors, insurers, and the attorneys representing Defendants in this case; the judges and mediator to whom the Action is assigned; all persons who validly request exclusion from (opt-out of) the Settlement; and all persons who previously released any claims encompassed in this Settlement.

6. **The Court makes the following determinations as to certification of the Class for settlement purposes only:**

a. The Class, comprised of at least tens of thousands of members throughout California, is so numerous that joinder of all members is impracticable;

b. There are questions of law or fact common to the members of the Class relating to the alleged slack-fill claims;

c. The claims of Plaintiff are typical of the claims of the other members of the Class;

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[2] The Product was known by two names during the Class Period, including "365 by Whole Foods Market Organic Hot Cocoa Rich Chocolate Flavor Mix" and an earlier name of "365 Everyday Value Organic Hot Cocoa Rich Chocolate Flavor Mix."

d. Plaintiff is capable of fairly and adequately protecting the interests of the members of the Class, in connection with the Agreement;

e. Common questions of law and fact predominate over questions affecting only individual members of the Class;

f. The Class is ascertainable; and

g. Resolution of the Released Claims in this litigation by way of a statewide settlement is superior to other available methods for the fair and efficient resolution of the claims of the Class.

7. **Designation of Class Representative.** The Court appoints Plaintiff Jennifer Goodwin as the representative of the Class ("Class Representative") for the sole purpose of the class action Settlement.

8. **Designation of Class Counsel.** The attorneys Abbas Kazerounian, Jason A. Ibey, and Gil Melili of the law firm Kazerouni Law Group, APC, are hereby designated as Class Counsel for the Settlement Class.

9. **Final Approval Hearing.** A hearing regarding final approval of the Settlement will be held, as indicated below, to determine, among other things, whether to: (i) finally approve the Settlement as fair, reasonable, and adequate; (ii) bind Settlement Class Members by the Releases set forth in the Agreement; (iii) permanently bar and enjoin Plaintiff and all Settlement Class Members who do not timely and properly exclude themselves from the Class (including Settlement Class Members who never received actual notice of the Settlement and who did not otherwise have knowledge of the Settlement) and any person actually or purportedly acting on their behalf from filing, commencing, prosecuting, maintaining, intervening in, or participating in (as parties, class members or otherwise) any action in any jurisdiction based on or relating to any of the Released Claims; (iv) find that the Class Notice as given was the best notice practicable under the circumstances, is due and sufficient notice to the Class, and fully satisfies the requirements of due process and Cal. R. Ct., rule 3.766(d); (v) approve the plan of distribution of the Individual Settlement

Awards; (vi) finally certify the Settlement Class; and (vii) approve requested attorneys' fees and costs, a proposed service award to Plaintiff, and class notice and administration expenses.

10. **Settlement Administrator.** Simpluris, Inc. is hereby appointed as the Claims Administrator and shall be required to perform all the duties of the Claims Administrator as set forth in the Agreement and this Order.

11. **Class Notice.** The Court approves the Class Notice in the Agreement (including the Website Notice attached as Exhibit A to the Agreement, E-Mail Notice from the Claims Administrator attached as Exhibit B(1) to the Agreement, E-Mail Notice from Defendants attached as Exhibit B(2) to the Agreement, the Media Notice attached as Exhibit C to the Agreement, and the In-Store Notice attached as Exhibit D to the Agreement) and the manner of providing notice to Settlement Class Members described in Paragraph 14 of the Agreement. The Court finds that this is the best practicable notice under the circumstances and is reasonably calculated, under all the circumstances, to apprise Settlement Class Members of the pendency of the proposed Settlement, the terms of the Agreement, and their right to object to the Settlement or exclude themselves from the Settlement Class. The Court further finds that the Class Notice is reasonable, constitutes due, adequate, and sufficient notice to all persons entitled to receive notice, and meets the requirements of due process. The Court hereby directs the Settling Parties and the Claims Administrator to provide the Class Notice in accordance with the Schedule of Future Events below.

12. Class Counsel shall file with the Court, prior to the Final Approval Hearing, proof that notice was provided in accordance with the Settlement Agreement and this Order, in accordance with the Schedule of Future Events below.

13. **Exclusion from the Settlement Class.** Any Settlement Class Member who wishes to be excluded from the Class must send a written Request for Exclusion to the Claims Administrator, by U.S. mail, postage prepaid, to the address provided in the Class Notice and Settlement Website. Any such Request for Exclusion must be postmarked no later than the Opt-Out Deadline (which is 80 Days after the Class Notice is provided).

a. To be valid, the Request for Exclusion must: (1) state the Class Member's full name and current address; (2) specifically and clearly state his/her desire to be excluded from the Settlement and from the Settlement Class in *Goodwin v. Whole Foods Market, Inc., et al.*, Case No. 21STCV40456 (Superior Court of California, Los Angeles County); and (3) include the Settlement Class Member's signature.

b. Settlement Class Members may opt-out on an individual basis only. So-called "mass" or "class" opt-outs, whether filed by third parties on behalf of a "mass" or "class" of class members or multiple class members where no personal statement has been signed by each and every person who desires to Opt-Out, shall not be allowed.

c. Any Settlement Class Member who submits a timely Request for Exclusion may not file an objection to the Settlement and will be deemed to have waived any rights or benefits under this Agreement. Any Settlement Class Member who submits both a Request for Exclusion and a Claim Form will be deemed to have requested to be excluded.

d. Except for those Settlement Class Members who timely and properly file a Request for Exclusion, all Settlement Class Members will be deemed to be members of the Class for all purposes under the Agreement, and upon Final Approval, will be bound by its terms, regardless of whether they receive any monetary relief or any other relief, including, but not limited to, the Releases in Paragraph 26 of the Settlement Agreement.

e. A sample Request for Exclusion form shall be made available on the Settlement Website in the form attached as Exhibit I to the Agreement.

14. **Objections and Appearances.** Any Settlement Class Member who has not submitted a Request for Exclusion, who complies with the objection requirements and has standing to object may object to any aspect of the proposed Settlement either on his or her own or through an attorney hired at his or her expense. Any Settlement Class Member who wishes to object to the Settlement must do so in writing no later than the Objection Deadline, as specified in the Class Notice and this Preliminary Approval Order. The written objection must be mailed (with the requisite postmark) to the Claims Administrator, no later than the Objection Deadline.

15. A valid written objection must include: (1) the objector's full name, current address, current telephone number, and email address (if any); (2) identify the approximate date of purchase of the Product by the Settlement Class Member; (3) a statement of the position(s) the objector wishes to assert, including the factual grounds for the position; and (4) the objector's signature. Additionally, the objector may choose to submit any documents that the objector wishes to be considered in connection with the objection, such as proof of purchase.

16. If a Settlement Class Member retains separate counsel to represent him or her in connection with the Settlement and that attorney intends to appear at the Final Approval Hearing, the they attorney must file with the Court a notice of appearance by the Objection Deadline.

17. If any objection is rejected or overruled, the objecting Settlement Class Member will be bound by the Final Judgment as if he or she had not objected.

18. **Service of Papers.** The Settling Parties shall serve on each other and on all other parties who have filed notices of appearance, at or before the Final Approval Hearing, any further documents in support of the proposed Settlement, including responses to any papers filed by Settlement Class Members. The Settling Parties and the Claims Administrator shall promptly furnish to each other any and all objections or written requests for exclusion that may come into their possession. Class Counsel shall file such objections or requests for exclusion with the Court on or before the date of the Final Approval Hearing.

19. **Termination of Settlement.** This Settlement Agreement will terminate by decision of either the Defendants or the Plaintiff through Settlement Class Counsel, if: (A) the Court, or any appellate court, rejects, modifies, or denies approval of any portion of this Agreement or the proposed Settlement that the terminating Party reasonably determines(s) is material, including, without limitation, the terms of relief, the Maximum Settlement Amount, the findings or conclusions of the Court, the provisions relating to notice, the definition of the Class, or the terms of the Release; (B) the Court, or any appellate court, does not enter or completely affirm, or alters or expands, any portion of the Final Approval Order, or any of the Court's findings of fact or conclusions of law, that the terminating Party reasonably determine(s) is material; or (C) 1,000 Settlement Class Members timely

exclude themselves from (opt-out of) the Settlement. The terminating Party must exercise the option to withdraw from and terminate the Agreement, no later than twenty (20) Days after receiving notice of the event prompting the termination. In such event, the Parties will be returned to the positions that they occupied as of February 13, 2024.

20. **Use of Order Following Termination of Settlement.** This Order shall be of no force and effect if the Settlement does not become Final. This Order shall not be offered by any person as evidence in any action or proceeding against any Party hereto in any court, administrative agency, or other tribunal for any purpose whatsoever, other than to enforce or otherwise effectuate the Agreement (or any agreement or order relating thereto), including the Releases, or this Order. Neither shall this Order be offered by any person or received against any of the Released Parties as evidence or construed as or deemed to be evidence of any presumption, concession, or admission by any of the Released Parties of:

a. the truth of the facts alleged by any person or the validity of any claim that has been or could have been asserted in the Action or in any litigation, or other judicial or administrative proceeding, or the deficiency of any defense that has been or could have been asserted in the Action or in any litigation, or of any liability, negligence, fault, or wrongdoing of any of the Released Parties;

b. any fault, misrepresentation, or omission with respect to any statement or written document approved or made by any of the Released Parties or any other wrongdoing by any of the Released Parties; or

c. any liability, negligence, fault, or wrongdoing in any civil, criminal, or administrative action or proceeding by any of the Released Parties.

21. **Necessary Steps.** The Court authorizes the Settling Parties to take all necessary and appropriate steps to implement the Agreement.

22. **Schedule of Future Events**. Accordingly, the following are the deadlines by which certain events must occur:

Last day to commence the Class Notice (media notice, email notice to the extent available, long-form notice)	30 Days from the date of this Amended Order

Last day for Claims Administrator to publish the Settlement Website	30 Days from the date of this Amended Order
Last day for Class Counsel to file motion for award of attorneys' fees, litigation costs, Class Representative Service Award, and notice and claims administration expenses	89 Days from the date of this Amended Order
Last day for requests for exclusion from the Settlement to be postmarked	110 Days from the date of this Amended Order
Last day for claims to be submitted	110 Days from the date of this Amended Order
Last day for Settlement Class Members to serve objections to Settlement	110 Days from the date of this Amended Order
Last day for Class Counsel to file motion for final approval of settlement	~~14~~ court days prior to Final Approval Hearing 16
Last day for the Settling Parties to respond to any objections filed by Settlement Class Members	140 Days from the date of this Amended Order
_____, 2025 at ____ _.m. Dec. 3, 2025 at 10:30 am	Hearing on motion for final approval of settlement and application for attorneys' fees and costs, Class Representative's service award, and notice and claims administration expenses (Final Approval Hearing) [*At least 150 calendar days after Amended Order*]

DONE and ORDERED in Chambers in Los Angeles, California, this _____ day of _____, 2025.

06/26/2025

Carolyn B Kuhl

Hon. Carolyn B. Kuhl
Superior Court Judge

cc: All Counsel of Record

Public court record.

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Court: Superior Court of California, County of Los Angeles
Case number: 21STCV40456
Filed: 2025-06-26

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