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SAN FRANCISCO COUNTY  
SUPERIOR COURT

FEB 14 2020

CLERK OF THE COURT

  
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SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN FRANCISCO

DEPARTMENT 303

PHYLLIS BRANNIN, VIRGINIA GOMEZ and  
VENUS SAVAGE, Individually and On Behalf  
of All Others Similarly Situated,

Plaintiffs,

v.

GOLDEN GRAIN COMPANY and DOES 1  
through 100

Defendants.

Case No. CGC-16-555084

ORDER RE PLAINTIFFS' MOTION FOR  
PRELIMINARY APPROVAL OF CLASS  
ACTION SETTLEMENT AND APPROVAL  
OF CLASS NOTICE

Plaintiffs' motion for preliminary approval is continued for a supplemental filing. The supplemental filing is due on or before March 9, 2020. Two sets of courtesy copies shall be delivered to the Court by 4:30 p.m. on that date. A further hearing will be held on March 20, 2020 at 1:30 p.m.

The purpose of the supplemental filing is to address the issues raised by the Court in its tentative ruling. For reference, the substance of the tentative ruling is reproduced below:<sup>1</sup>

<sup>1</sup> The text below contains non-substantive revisions, including the removal of prefatory text. Some of the issues raised in the tentative were discussed at the hearing. The text below has not been updated to reflect those discussions. However, the Court raises two requests for clarification following those discussions. First, the parties are asked to approximate the number of boxes of relevant product that were sold during the relevant time period, if possible. Second, the parties are asked to confirm that the notice

1 **I. Class Certification**

2 A contested class certification motion was granted on January 25, 2019. The order required the  
3 parties to confer on the precise language for the class definition. The Court finds the class definition  
4 consistent with the order granting class certification. Accordingly, there is no need to further discuss  
5 class certification in connection with preliminary approval.

6 **II. Fairness**

7 **A. Monetary Relief**

8 Plaintiffs are asked to provide more detail regarding their claim valuation. Specifically, the Court  
9 infers from the papers that Plaintiffs viewed the monetary component of the case as valued in the range of  
10 \$1.00 to \$1.52 per purchase (multiplying .41 \* 2.43 yields about 1; multiplying .625 \* 2.43 yields about  
11 1.52). (See Jan. 25, 2019 Order, 10-11 [articulation of Plaintiffs' theory of recovery]; McCauley Decl. ¶  
12 31 [relevant numerical values].) Is this inference correct? What is Plaintiffs' estimate of the class-wide  
13 value of the case, assuming full participation. Put differently, approximately<sup>2</sup> how many relevant  
14 purchases have there been.<sup>3</sup>

15 **B. Injunctive Relief**

16 Golden Grain is required to implement the injunctive relief within 120 days of the Effective Date.  
17 But there is no provision that requires Golden Grain to continue using the modified packaging for any set  
18 period of time. Accordingly, it would not appear to violate the injunction to print one batch of packages  
19 using the modified marketing before changing back to the prior packaging. The parties should address  
20 whether the proposed injunction provides meaningful relief for the class if it does not constrain Golden  
21 Grain for a fixed period of time. The parties should also explain their reasons not to constrain Golden  
22 Grain's labeling activity for a fixed period of time.

23 need not be translated to any language other than English or Spanish.

24 <sup>2</sup> The class period has not closed, so an approximation is all that is possible.

25 <sup>3</sup> This is a claims-made settlement with a small return on individual claims. The Court anticipates that  
26 this may result in a sizable difference between the opportunity created by the settlement for the class as a  
27 whole and the final settlement payment made by Golden Grain. The parties will be asked to provide  
28 comprehensive information about the class response to the settlement at final approval. Moreover, the  
Court anticipates that the parties will brief any issues this difference may present prior to final approval.  
For now, the Court understands the framework for the monetary component of the settlement and the  
reasons that the parties have elected to use that framework, but requests additional data points before  
granting preliminary approval and authorizing the dissemination of notice.

1 **III. Notice**

2 **A. Dissemination of Notice**

3 The parties plan to use several forms of publication notice. For the Court to approve this plan, the  
4 parties must submit evidence, which may be in the form of declarations, demonstrating that their notice  
5 plan is adequate. The present record does not have such evidence.

6 **B. Claims Procedure**

7 The Court acknowledges the need to discourage fraudulent claims. At the same time, the Court  
8 recognizes that the monetary component of this settlement can only be satisfied if individuals with valid  
9 claims are encouraged to submit claims for small sums of money. Given the small sums at issue, in the  
10 absence of evidence of a meaningful risk of fraud, the Court is more concerned with encouraging proper  
11 claimants to submit claims than deterring fraudulent claims. Consistent with this balancing, the parties  
12 should address the following issues.<sup>4</sup>

13 First, why is there a need to limit Class members to one claim per household? Two cohabiting  
14 blood relatives could be Class members based on separate purchases. Why should they lose out?  
15 Moreover, why should they be asked to make an attestation as to whether any other member of their  
16 Household submitted a claim?

17 Second, there will be a time lag between claim submission and claim payment. However, there  
18 does not appear to be a procedure in place for updating mailing addresses.

19 Third, the definition of Valid Claim in the Proposed Settlement requires the Claim Form to be  
20 completed “accurately” and “fully” on the initial submission, but also permits the settlement  
21 administrator to follow up for more information. (Proposed Settlement ¶ 41.) If the settlement  
22 administrator concludes that a Claim Form is deficient, the settlement administrator should follow up, if  
23 possible, to address the deficiency. Moreover, the rejected claims should be filed with the Court with  
24 personal identifying information, including name, contact information, and signature, redacted.

25 Fourth, the parties should file a declaration from the settlement administrator regarding the  
26 estimated reach of the notice, the number of Valid Claims and invalid claims submitted, the number of  
27 opt outs, and the number of objections prior to the final approval hearing.

28 <sup>4</sup> Overlapping issues relating to the content of the Claim Form are taken up separately, below.

1 Fifth, the settlement administrator is charged with the detection and prevention of fraud, including  
2 by requesting documentation and engaging in “cross examination.” (Proposed Settlement ¶ 46.) The  
3 parties are asked to explain what this means. The Court is concerned that cross-examining Class  
4 members over \$7.50 may unduly discourage valid claims.

5 **C. Objecting**

6 The process for objecting, as set forth in the Proposed Notice, is generally reasonable. (See  
7 Proposed Settlement, Ex. B at 4-5.) However, the objection contemplated in the Proposed Notice appears  
8 to be less comprehensive than the objection contemplated in the Proposed Settlement. (See *id.* at ¶ 52  
9 [also requiring a “detailed statement of each objection asserted” and “the reasons, if any, for requesting  
10 the opportunity to appear and be heard at the Final Approval Hearing”].) Which process controls?

11 Separately, what will be sufficient to “establish[.]” “membership in the Settlement Class”?

12 To the extent the parties believe that an objection is technically deficient, the parties should afford  
13 objectors an opportunity to correct any technical deficiencies in their objections and Plaintiffs should file  
14 all putative objections with the Court for the Court’s review, with contact information redacted, whether  
15 or not they are valid.

16 **D. Requesting Exclusion**

17 Requests for exclusion must be sent to Class Counsel by email or mail, must say that the  
18 individual wants “to be excluded from *Brannin v. Golden Grain Company*, San Francisco Superior Court  
19 Case No. CGC-15-555084[.]” and must include a name, address, email address, and telephone number.  
20 (Proposed Settlement, Ex. B at 4.) The parties should attempt to afford individuals who request  
21 exclusion an opportunity to correct any technical deficiencies and should submit rejected requests for  
22 exclusion, with personal identifying information redacted, to the Court for review prior to final approval.

23 **E. Substance**

24 In the following sections, the Court lists questions and suggestions for the substantive notice  
25 documents.<sup>5</sup>

26 //

27  
28 <sup>5</sup> To the extent changes are made to the settlement, conforming changes may also be needed in the notice.  
The parties may also make other improvements to the notice not identified here.

1                   **1.       Translations**

- 2       • Do the notice documents need to be translated into languages other than English? (See Proposed  
3       Settlement, Ex. C [containing Spanish-language instructions to access information in Spanish].)  
4       The parties should submit a declaration stating their views on this issue and stating whether  
5       appropriate steps have been taken to ensure Class members will be able to understand the notice.

6                   **2.       Claim Form**

- 7       • Page One, First Paragraph: It appears that Class members will only be entitled to receive “\$1.25  
8       for each box purchased” if each purchase is supported by a proof of purchase. If a Class member  
9       claims ten purchases, but can produce only a receipt for one purchase, then the Class member will  
10      get only \$1.25, not \$12.50. The Proposed Settlement and Claim Form are susceptible to a  
11      different reading, that if you submit a proof of purchase, you get \$1.25 for every box you  
12      purchased whether or not that box is backed up by a proof of purchase. The Claim Form should  
13      be revised so it is unambiguous – i.e., if you submit proof of purchase you will be entitled to  
14      \$1.25 for each qualifying purchase that you prove you made. That way, a person in the situation  
15      above – i.e., a person who made more than six purchases but has proof of less than six purchases  
16      – would know that they are better off if they do not submit a proof of purchase.  
17      • Page Two: The requirement to itemize the number of boxes purchased is unduly burdensome. If  
18      a person made more than six purchases, they should be able to so state rather than wracking their  
19      mind over whether it was fifty purchases or fifty-three purchases. Similarly, the person should  
20      not have to itemize those purchases by product.  
21      • Page Three: The “under penalty of perjury” language appears likely to unduly discourage claims,  
22      especially with the onerous requirements in page two. Is it the parties’ position that a claimant  
23      who submits a false claim can be prosecuted for perjury? If so, the parties should provide legal  
24      support for that contention to the Court and modify the claim form to state as much. If the parties  
25      are instead attempting to dissuade false claims by using strong language, the “under penalty of  
26      perjury” language does not appear appropriate, especially where the claimant is being asked to  
27      certify that the information is accurate and correct to the best of his or her knowledge,  
28      information, and belief.<sup>6</sup>  
29      • Page Three: The parties should not encourage the transmission of original documents. The  
30      sender should be instructed to send a copy and keep the original, in which case the sender will  
31      retain the original if mail is lost.  
32      • The parties should encourage Class members to keep a copy of their Claim Form for their records.

33                   **3.       Long-Form Notice**

- 34      • Page One, Header: The case name should be in the header.  
35      • Page One, Class Definition: The parties should consider whether “...you are entitled...” should  
36      be replaced with “...you may be entitled...” because the settlement will not be finally approved  
37      until after notice issues, if at all, and there is no entitlement to compensation absent the  
38      submission of a Valid Claim.  
39      • Page One: The summary of legal rights and obligations, which is currently the final section of the  
40      document, should be included on the first page before the table of contents. This can replace the

<sup>6</sup> Notably, the claim form does not track the certification required for a declaration provided to Court under penalty of perjury. (See Cal. Code of Civ. Proc. § 2015.5.)

1 first two of the three bullet points<sup>7</sup> between the class definition and the table of contents. The  
2 summary should explain that a Class member can elect to both submit a claim form and object.

- 3 • Page One, Table of Contents: First, the table of contents includes a header entitled “What  
4 happens if you do nothing?” That section should be added to the notice. Second, the “Summary  
5 of your legal rights and options” should be removed from the table of contents if that information  
6 is advanced above the table of contents.
- 7 • Page Two, What is this Case About?: The notice should provide a brief statement of Plaintiffs’  
8 theory of recovery to enable a reader to understand the reason for the small monetary payment.
- 9 • Page Two, What Benefits does this Settlement Provide?, First Bullet: The language should be  
10 revised as follows: “...they prove they purchased in the state of California at any time from...”<sup>8</sup>
- 11 • Page Three, How do Settlement Class Members Get Paid?/When Will Settlement Class Members  
12 Get Paid?: In the notice, the parties inform the reader that payment is sent by mail and that  
13 payment may take some time. First, the parties should advise the reader that the payment is in the  
14 form of a check that will be negotiable for 120 days. Second, the parties should provide a  
15 mechanism for the Class members to update their mailing address if it changes after a claim is  
16 submitted and before payments are distributed.
- 17 • Page Four, Objecting: The notice should explain that, through an objection, an individual asks  
18 the Court not to approve the settlement. The notice should explain that individuals who object  
19 can also submit claim forms, so they will receive a settlement payment if the settlement is  
20 approved.
- 21 • Page Five, How to Get More Information: The notice gives an incorrect url, the Court’s website  
22 is sfsuperiorcourt.gov and the online services page is found at  
23 <https://www.sfsuperiorcourt.org/online-services>. The notice should provide instructions for  
24 accessing case information from that page.
- 25 • The release should be summarized in the notice.

#### 26 4. Short-Form Notice

- 27 • The short-form notice contains the same ambiguity as described in connection with the Claim  
28 Form.

#### 29 5. Other Forms of Notice

- 30 • The parties should preview the other publications that they will make, include the advertising over  
31 social media and the press release.
- 32 • The website should also include all tentative rulings and orders served or filed on the parties in  
33 connection with the preliminary approval proceedings.

### 34 IV. Release

35 The release needs to be rewritten. First, the release itself does not refer to Golden Grain.  
36 (Proposed Settlement ¶ 55.) Second, were the release to refer to Golden Grain, it would be overbroad  
37 because it is not limited to the facts or claims at issue in this lawsuit. This is particularly problematic in a

38 <sup>7</sup> The second bullet point appears to misstate the time period in which a Class member may respond to  
the notice.

<sup>8</sup> The elided language need not be modified.

1 case, such as this one, that relies on publication notice to reach a number of individuals that may have  
2 different claims. Second, the Section 1542 waiver refers to paragraph 44 as the release, but paragraph 44  
3 does not contain the release.

4 **V. Miscellaneous Issues**

5 **A. Settlement Administrator**

6 Before an administrator is appointed, the proposed administrator must submit a declaration  
7 explaining its competency to act in that capacity.

8 **B. Claim Form Deadline**

9 The definition for "Claim Form Deadline" is incomplete. (Proposed Settlement ¶ 20.)

10 **C. Proposed Judgment**

11 The parties intend to request a judgment dismissing the Complaint with prejudice. (See Proposed  
12 Settlement ¶¶ 34, 54.) If the Court approves a class settlement, it may not enter an order dismissing the  
13 action at the same time as, or after, entry of judgment. (Cal. Rules of Court, Rule 3.769(h).)

14 **D. Proposed Preliminary Approval Order**

15 The Court asks the parties to provide a Microsoft Word-editable version of their proposed  
16 preliminary approval order. The Court also asks the parties to ensure that the timeline in that order is  
17 workable. For example, it appears that 105 days may pass before the entry of the preliminary approval  
18 order and the timely mailing of claim forms, objections, and opt outs.<sup>9</sup> Accordingly, 96 days from the  
19 entry of the preliminary approval order will not be enough time for Plaintiffs to respond to all timely  
20 objections, because timely objections may not be received at that point.

21 IT IS SO ORDERED.

22  
23 Dated: February 14, 2020



24  
25 Charlene Padovani Kiesselbach  
26 Judge of the Superior Court

27  
28 <sup>9</sup> The settlement should clearly state that the deadline to respond to the notice is a mailing/emailing  
deadline, not a deadline for receipt.

**CERTIFICATE OF ELECTRONIC SERVICE**  
(CCP 1010.6(6) & CRC 2.251)

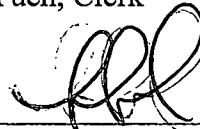
I, Annie Pascual, a Deputy Clerk of the Superior Court of the County of San Francisco, certify that I am not a party to the within action.

On 2/14/2020, I electronically served the attached document via File & ServeXpress™ on the recipients designated on the Transaction Receipt located on the File & ServeXpress™ website.

Dated: 2/14/2020

T. Michael Yuen, Clerk

By: \_\_\_\_\_



Annie Pascual, Deputy Clerk