

FILED
San Francisco County Superior Court

MAY 08 2020

CLERK OF THE COURT
BY: R. Michael Dill
Deputy Clerk

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 GRANTING CONTINUED MOTION
FOR PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT AND APPROVAL
OF CLASS NOTICE

WHEREAS, this Court has reviewed the Second Amended Settlement Agreement and Release entered into between defendant Golden Grain Company (“Golden Grain” or “Defendant”) and Virginia Gomez (“Gomez”) and Venus Savage (“Savage”) (“Plaintiffs” or “Class Representatives”) as individuals and Class Representatives (Golden Grain and the Class Representatives are referred to collectively herein as the “Parties”), together with all exhibits thereto, the record in this case, including the preliminary approval filings dated December 17, 2019, March 9, 2020, and May 4, 2020,¹ and the arguments of counsel;

WHEREAS, on January 25, 2019, this Court certified the following Class:

All purchasers of the following Near East Products in California since October 28, 2012:

Couscous products: Broccoli & Cheese, Mediterranean Curry, Herbed Chicken,

¹ The Court most recently set a continued hearing on the motion for May 8, 2020. Because the May 4, 2020 supplemental filing adequately addressed the Court’s remaining concerns, the Court vacated the May 8, 2020 continued hearing.

1 Parmesan, Roasted Garlic & Olive Oil Wheat Couscous, Toasted Pine Nut, Wild
2 Mushroom & Herb, Roasted Garlic & Olive Oil Pearled Couscous, and Basil & Herb
Pearled Couscous.

3 Rice pilaf products: Original Rice Pilaf, Brown Rice Pilaf, Lentil Rice Pilaf, Chicken
4 Rice Pilaf, Spanish Rice Pilaf, Garlic & Herb Rice Pilaf, Roasted Chicken and Garlic Rice
5 Pilaf, Original Long Grain and Wild Rice, Garlic and Herb Long Grain and Wild Rice,
Roasted Vegetable & Chicken Long Grain & Wild Rice, Sesame Ginger Rice, Toasted
Almond Rice Pilaf, and Wild Mushroom & Herb Rice Pilaf.

6 Quinoa products: Roasted Red Pepper & Basil, Rosemary & Olive Oil, Zesty Lemon and
7 Mediterranean Medley.

8 Whole grain and tabbouleh products: Chicken & Herbs, Brown Rice Pilaf, Roasted Pecan
& Garlic, Roasted Garlic & Olive Oil Wheat Couscous, and Tabbouleh Mix.

9 (the “Near East Products”). The Court also appointed Phyllis Brannin (“Brannin”),² Gomez and
10 Savage as Class Representatives and Schubert Jonckheer & Kolbe LLP as Class Counsel;

11 **IT IS HEREBY ORDERED AS FOLLOWS:**

12 1. All terms and definitions used herein have the same meanings as set forth in the
13 Second Amended Settlement Agreement and Release (the “Settlement”) entered between the
14 parties on May 1, 2020.³

15 2. The proposed Settlement is hereby preliminarily approved as being within the
16 range of possible final approval such that notice thereof should be given to members of the
17 Class.

18 3. For settlement purposes only, the certified class definition is narrowed as
19 follows: the Class is limited to all persons or entities who purchased one of the Near East
20 brand products listed above in California from October 28, 2012 to the date of preliminary
21 approval, excluding any purchases made for the purposes of resale as well as Golden Grain,
22 its officers, directors, management, employees, subsidiaries, and affiliates, and any judges or
23 justices involved in this action and any members of their immediate families or their staff.

24 (Settlement ¶ 22.)

25
26
27 ² Counsel is currently unable to contact Brannin, who did not sign the Second Amended
28 Settlement Agreement and Release.

³ The Settlement is attached as Exhibit 1 to the May 4, 2020 Declaration of Miranda P.
Kolbe.

1 4. For settlement purposes only, the Court finds that the revised class definition
2 meets the requirements for certification under Code of Civil Procedure section 382.
3 Specifically, for settlement purposes: (1) the proposed settlement class is numerous and
4 ascertainable; (2) there are predominant common questions of law or fact; (3) Plaintiffs’
5 claims are typical of the claims of the members of the proposed settlement class; and (4) a
6 class action is superior to other methods to efficiently adjudicate this controversy through
7 settlement.

8 5. The Claim Form, the long form Notice, and the Summary Notice, which are
9 attached to the Settlement as Exhibits A, B and C, respectively, are hereby approved as to
10 form subject to these modifications: (1) The discussion of the release in Exhibit B at pages
11 3-4 shall be revised to conform with paragraph 55 of the Settlement, which sets forth a
12 narrower release; and (2) The missing word, “are,” shall be added to the last clause of the last
13 sentence of the third paragraph on page 6 in Exhibit B.

14 6. The Heffler Group will serve as the Settlement Administrator.

15 7. The proposed plan for distributing the notice – set forth in the Settlement at
16 paragraph 51, the Declaration of Jeanne C. Finegan attached as Exhibit 4 to the March 9,
17 2020 Declaration of Miranda P. Kolbe, and the Declarations of James R. Prutsman filed on
18 March 9, 2020 and May 4, 2020 – meets the requirements of due process and constitutes the
19 best notice practicable under the circumstances.

20 8. Dissemination of Class Notice shall commence on or before June 8, 2020 and
21 shall be completed on or before July 8, 2020.

22 9. A copy of the Notice, together with the Claim Form, shall be posted on a
23 settlement website, www.branninsettlement.com (the “Settlement Website”) in both Spanish
24 and English. The Claim Form can be filled in and submitted online, along with proof of
25 purchase. Class Members who wish to submit a Claim Form by mail can download the
26 Claim Form or may request that the Claim Form be mailed to them at no charge by sending
27 an e-mail to an e-mail address to be provided on the Settlement Website. The Settlement
28 Website shall be mobile-browser viewable. In addition to the Notice and Claim Form, copies

1 of the Settlement, Summary Notice, and all rulings and orders, including tentative rulings and
2 orders, served or filed on the parties in connection with the preliminary approval proceedings
3 shall also be posted on the Settlement Website.

4 10. The procedures set forth in the Settlement at paragraphs 52-53 and the
5 corresponding portions of the Class Notice for objecting to the settlement and requesting
6 exclusion are approved.

7 11. Objections must be submitted on or before August 24, 2020.

8 12. Requests for exclusion must be submitted on or before August 24, 2020.

9 13. Claim Forms must be submitted on or before August 24, 2020.

10 14. The Settlement Administrator will process Claim Forms as described in the
11 Settlement and the Declarations of James Prutsman filed on March 9, 2020 and May 4, 2020.
12 On or before September 3, 2020, the Settlement Administrator will notify all Claimants
13 whose Claims were rejected of the basis for rejection and will provide them with an online
14 opportunity to dispute or cure the defect. Rejected Claimants who wish to dispute or cure the
15 basis for rejection must do so within fourteen (14) days of notification of the rejection.

16 15. After the deadline for disputing rejected Claims has passed, the Settlement
17 Administrator will consider all disputed, rejected Claims and may, in its discretion, order any
18 or all of such disputed, rejected Claims to be paid. Counsel for the Parties may, by mutual
19 decision, decide to allow any or all remaining disputed, rejected Claims. Finally, no later
20 than seven (7) days after the deadline for disputing any rejected Claims has passed, the
21 Settlement Administrator will notify any Claimants who submitted any remaining disputed,
22 rejected Claims that their Claims remain rejected, and that they may notify the Settlement
23 Administrator that they elect to escalate their dispute to the Court within the next seven (7)
24 days.

25 16. No later than October 15, 2020, the Settlement Administrator shall submit a
26 report to the Court regarding the dissemination of Notice, the number of valid and invalid
27 Claims submitted and their monetary values, and regarding any disputed, rejected Claims that
28 Claimants have requested be finally resolved by the Court. The Settlement Administrator

1 shall file all documents, including all communications, submitted in connection with any
2 Claims made by Claimants who elected to escalate their disputes to the Court regarding their
3 rejected Claims.⁴

4 17. No later than August 10, 2020, Plaintiffs shall file all papers in support of their
5 motion for payment of attorneys' fees and expenses and incentive awards.

6 18. No later than October 15, 2020, Plaintiffs shall file all papers in support of their
7 application for final approval of the Settlement. In conjunction with that filing, the Parties
8 shall provide a report to the Court regarding the timely requests for exclusion from and
9 objections to the Settlement, and shall attach to a declaration submitted in conjunction with
10 the papers seeking final approval, an exhibit containing any requests for exclusion or
11 objections that were rejected as deficient, as well as any that were deemed to be properly
12 made.⁵

13 19. The Final Approval Hearing shall be held by the Court on November 5, 2020 at
14 10:00 a.m., to consider and determine whether the proposed Settlement should be approved
15 as fair, reasonable, adequate, and in the best interests of the Class Members; whether any or
16 all of the remaining disputed, rejected Claims shall be accepted; whether Class Counsel's fee
17 and expense application should be approved; whether the incentive awards to the Class
18 Representatives should be approved; and any other matters the Court deems appropriate.

19 20. The Court may change the date of the Final Approval Hearing without further
20 notice to the Class (except to those who have filed timely and valid objections).

21 21. The dates set above are summarized here:

Event	Date
Dissemination of Notice Begins	June 8, 2020
Dissemination of Notice Complete	July 8, 2020

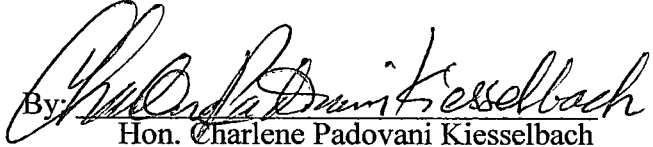
26
27 ⁴ If an interested entity believes that some of this material is properly sealed, the material
may be conditionally lodged under seal and that entity may file a motion to seal.

28 ⁵ The parties may redact sensitive personal information. If an interested entity believes
sealing is necessary, the material may be conditionally lodged under seal and that entity may file
a motion to seal.

1	Deadline to File All Papers in Support of	August 10, 2020
2	Request for Fees, Costs, and Incentive	
3	Awards	
4	Deadline to Submit Objections	August 24, 2020
5	Deadline to Submit Claims	August 24, 2020
6	Deadline to Request Exclusion	August 24, 2020
7	Deadline for Settlement Administrator to	September 3, 2020
8	Send Notification of Rejected Claims	
9	Deadline for Filing of Settlement	October 15, 2020
10	Administrator's Report Regarding	
11	Rejected Claims	
12	Deadline for Filing of Final Approval	October 15, 2020
13	Papers	
14	Final Approval Hearing	November 5, 2020 at 10:00 a.m.

16

17 Dated: May 8, 2020

17 By: 
 18 Hon. Charlene Padovani Kiesselbach
 19 Judge, San Francisco Superior Court

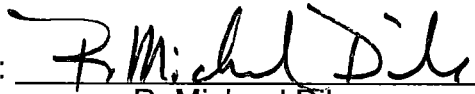
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3 **CERTIFICATE OF SERVICE BY MAIL (C.C.P. §1013)**

4 The undersigned certifies, under penalty of perjury, that: I am employed in the City and
5 County of San Francisco, California, am over the age of 18 years, and am not a party to
6 the within action. I served the attached **Order Granting Continued Motion for**
7 **Preliminary Approval of Class Action Settlement and Approval of Class Notice** by
8 enclosing a true copy thereof in an envelope(s) addressed as shown below and placing
9 the envelope(s) for collection and mailing on **May 8, 2020** in San Francisco, California
10 following the Court's ordinary practices. I am readily familiar with the Court's practice
11 for collecting and processing correspondence for mailing. On the same day that
12 correspondence is placed for collection and mailing, it is deposited in the ordinary
13 course of business with the United States Postal Service in a sealed envelope with
14 postage fully prepaid.

10 **Robert C. Schubert, Esq.**
11 **Miranda P. Kolbe, Esq.**
12 **Kathryn McCauley, Esq.**
13 **Schubert, Jonckheer & Kolbe LLP**
14 **3 Embarcadero Center, Suite 1650**
15 **San Francisco, CA 94111**

Rick L. Shackelford, Esq.
Daniell K. Newman, Esq.
Greenberg Trauig, LLP
1840 Century Park East, Suite 1900
Los Angeles, CA 90067

16 Dated: **May 8, 2020**

17 By: 
18 **R. Michael Diles**
19 **Deputy Court Clerk**