

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

MATT DIFRANCESCO, ANGELA
MIZZONI, and LYNN MARRAPODI,
individually and on behalf of all others
similarly situated,

Plaintiffs,

v.

UTZ QUALITY FOODS, INC.,

Defendant.

Civil Action No. 1:14-CV-14744-DPW

FINAL ORDER

A Fairness Hearing was held before this Court on September 13, 2019 to consider, among other things: (1) whether the Settlement memorialized in the Amended Settlement Agreement in the above-entitled action represents a fair, reasonable and adequate settlement of the Action; (2) the amounts, if any, to be paid as Attorneys' Fees and Expenses to Class Counsel; and, (3) Service Awards, if any, to be paid to Class representatives (also referred to herein as "Settlement Class Representatives"). On May 26, 2021, a further hearing was held to consider the injunctive relief component of the Settlement, the likelihood of a two-phased distribution of settlement checks to Class Members, and the need for further support of Class Counsel's motion for Attorneys' Fees and Expenses (the "Fee Motion").

Based on the Amended Settlement Agreement, the Plaintiffs' Motion for Final Approval of Class Action Settlement; the "Fee Motion"; Plaintiffs' and Defendant's submissions in support of those motions and in support of final approval of the Settlement; and all prior proceedings herein and good cause appearing based on the record, the Court **ORDERS, ADJUDGES, AND DECREES** as follows:

1. The Court, for purposes of this Final Order (as that term is defined in Section II.A.18 of the Amended Settlement Agreement), adopts the defined terms as set forth in the Amended Settlement Agreement for any term not otherwise defined herein.

2. The Court has jurisdiction over the subject matter of the Action and personal jurisdiction over the Parties and Class Members.

3. On March 15, 2019, the Court entered an Order Authorizing Notice of Class Settlement and Notice of Final Fairness Hearing (ECF No. 103) ("Notice Approval Order"), which, *inter alia*, directed Notice of the proposed Settlement, and established a hearing date to consider the final approval of the Amended Settlement Agreement and the Fee Motion.

4. In the Notice Approval Order, the Court approved the Notice program, the Notices and Claim Form, and found that the form, content and method of giving notice constituted the best notice practicable and were reasonable. Declarations confirming that the Notices have been posted pursuant to the Notice Program and the Notice Approval Order, and describing the response by Settlement Class Members, have been filed with the Court. *See* Declaration of Steven Weisbrot (ECF No. 109); Declaration of Steven Platt (ECF No. 110). The Court finds that the distribution of the Notices has been achieved in accordance with the Notice Approval Order and the Amended Settlement Agreement.

5. The Notices and the Notice program provided the best notice practicable under the circumstances and fully satisfied the requirements of due process under the United States Constitution and Federal Rule of Civil Procedure 23. Based on the evidence and information supplied to the Court in connection with the Fairness Hearing, the Court finds that the Notices were adequate and reasonable. The Court further finds that through the Notices, the Settlement Class Members have been apprised of the nature and pendency of the Action, the terms of the Amended Settlement Agreement, as well as their rights to request exclusion, object, and/or appear at the Fairness Hearing.

6. The Court finds that Defendant has complied with the requirements of 28 U.S.C. § 1715.

7. The Court finds that the named-Plaintiffs, namely Matt DiFrancesco, Angela Mizzoni, and Lynn Marrapodi (“Plaintiffs” or “Settlement Class Representatives”), are similarly situated to absent Settlement Class Members and are typical of the Settlement Class and are adequate Settlement Class Representatives, and that Class Counsel and the Settlement Class Representatives have fairly and adequately represented the Settlement Class. The Court grants

final approval to its appointment of Settlement Class Representatives as provided in the Notice Approval Order, appointing Plaintiffs as Settlement Class Representatives.

8. For purposes of and in accordance with the Amended Settlement Agreement, the Court certifies the following Settlement Class under Fed. R. Civ. P. 23(a) and 23(b)(3):

All persons who, during the Class Period, purchased in the United States any of the Eligible Products.

Excluded from the Settlement Class are (a) Utz's board members or executive-level officers; (b) persons who purchased the Eligible Products primarily for the purpose of resale, including, but not limited to, retailers or re-sellers of the Eligible Products; (c) governmental entities; (d) persons who timely and properly excluded themselves from the Class as provided in the Amended Settlement Agreement; and (e) the Court, the Court's immediate family, and Court staff.

9. Willis A. Johnson, of Lithonia, Georgia who, according to the Settlement Administrator, submitted a timely and valid request to be excluded from the Settlement Class, is hereby excluded from the Settlement Class, is not a Class Member as that term is defined in the Amended Settlement Agreement and used herein, and shall not be bound by this Final Order or the Final Judgment, or any release provided therein.

10. For purposes of the Settlement and pursuant to the Amended Settlement Agreement, the Court finds that the Settlement Class defined above satisfies the requirement of Fed. R. Civ. P. 23(a) and (b)(3) in that: (a) the Settlement Class is so numerous that joinder of all Settlement Class Members would be impracticable; (b) there are issues of law and fact that are common to the Settlement Class; (c) the claims of the Settlement Class Representatives are typical of and arise from the same operative facts and seek similar relief as the claims of the Settlement Class Members; (d) the Settlement Class Representatives and Class Counsel have fairly and adequately protected the interests of the Settlement Class, as the Settlement Class Representatives have no interest antagonistic to or in conflict with the Settlement Class and have retained experienced and competent counsel to prosecute this matter on behalf of the Settlement Class; (e)

questions of law or fact common to Settlement Class Members predominate over any questions affecting only individual members; and (f) a class action and class settlement are superior to other methods available for a fair and efficient resolution of this controversy.

11. The Court approves the Settlement of the Action as set forth in the Amended Settlement Agreement and finds that the Settlement is fair, reasonable, adequate and is in the best interests of the Settlement Class Members. The Court further finds that the Amended Settlement Agreement was the product of an arm's-length negotiation conducted in good faith by the Parties and their experienced counsel. The Court directs the Parties to perform in accordance with the terms of the Amended Settlement Agreement, the Orders of this Court and the Final Judgment. To the extent that the terms of the Amended Settlement Agreement with respect to the distribution of the Settlement Fund conflict with this Final Order and the Final Judgment, this Final Order and the Final Judgment shall govern.

12. The Court approves the monetary Settlement consideration of One Million Two Hundred Fifty Thousand Dollars and 00/100 (\$1,250,000.00) described in the Amended Settlement Agreement. Under no circumstances shall Defendant's total monetary obligation under the Amended Settlement Agreement or pursuant to this Final Order and the Final Judgment exceed One Million Two Hundred Fifty Thousand Dollars and 00/100 (\$1,250,000.00).

13. The Court Orders Defendant to transfer the balance of the Settlement Fund not already paid by Defendant to the Settlement Administrator on or before July 1, 2022 to be used for: (a) the payment of timely, valid and approved Class Members' Claims; (b) all settlement administration expenses, including the costs and expenses that are associated with disseminating Notice, including, but not limited to, the Class Notice and the Summary Settlement Notice, the costs and expenses associated with the administration of the Settlement (including any costs

charged or incurred by the Settlement Administrator in satisfying Defendant's obligation pursuant to 28 U.S.C. § 1715(a) and 28 U.S.C. §1715(b))(collective, the "Settlement Administration Expenses"); (c) Court-approved Attorneys' Fees and Expenses, if any; and (d) a *cy pres* award, if any.

14. The Court further Orders that after the Final Settlement Date and before July 14, 2022, the Settlement Administrator shall issue settlement checks which in the aggregate total Five Hundred Forty Thousand Dollars and 00/100 (\$540,000.00) from the Settlement Fund to Settlement Class Members who submitted timely, valid and approved claims (the "First-Round Distribution"). In no event may settlement checks be issued before the Final Settlement Date. All settlement checks issued in the First-Round Distribution must be cashed or deposited by Class Members no later than October 12, 2022 (the "Check Cashing Deadline"). After the Check Cashing Deadline, checks that have not been cashed or deposited shall be deemed null and void.

15. Class Counsel has filed the Fee Motion. The Fee Motion is denied solely insofar as it seeks an Order granting service awards to the Settlement Class Representatives.

16. The Court shall hold a hearing on November 15, 2022 at 2:30 PM to decide: (1) pursuant to Fed. R. Civ. P 54(d)(2), the amount of Attorneys' Fees and Expenses requested in the Fee Motion, if any, to be awarded to Class Counsel and paid from the Settlement Fund; (2) if economically feasible and in the Court's discretion, the amount of any additional payments to be paid out of the Settlement Fund to those Settlement Class Members who cashed or deposited Settlement checks issued in the First-Round Distribution (such additional payments being the "Second-Round Distribution"); (3) the amount, if any, to be paid out of the Settlement Fund for additional Settlement Administration Expenses related to or arising out of the Second-Round Distribution; and (4) whether any amounts from the Settlement Fund should be distributed to the

United States Treasury as a *cy pres* recipient. Except for good cause shown, the hearing shall be held virtually.

17. Defendant is Ordered to comply with the non-monetary relief component of the Amended Settlement Agreement as follows: Within four (4) months after the Final Settlement Date and subject to the limitations set forth below, Defendant is enjoined from using the terms “Natural” and “All Natural” on its labeling and advertising of Eligible Products (the “Injunction”). However, Defendant shall not be obligated to remove or modify Historical Documents in its internal records or on any social media pages or its website, including but not limited to, any previous posts, comments, press releases, or third party media. Similarly, Defendant shall not be obligated to change any Historical Documents, written, electronic, or otherwise, not within its possession or control. This Final Order shall not: (a) prevent Defendant from advertising and/or labeling its products that do not contain GMO, Synthetic Ingredients, artificial ingredients, and artificial flavors as “Natural” or “All Natural;” (b) prohibit Defendant from disclosing that any given product contains GMO ingredients either on a product label or otherwise, or require Defendant to disclose that a product contains GMO on product labels or advertisements; (c) prevent Defendant from making “natural flavor” claims in accordance with applicable U.S. Food and Drug Administration (“FDA”) regulations, or from otherwise using the term “natural” as may be necessary to comply with federal, state, or local laws or regulations; or, (d) preclude Defendant from making disclosures or any labeling or advertising changes that (i) Defendant reasonably believes are necessary to comply with any statute, regulation, guidance, pronouncement, or law of any kind (including but not limited to the Federal Food, Drug, and Cosmetic Act, FDA regulations, and/or applicable state law); or (ii) are necessitated by product changes and/or reformulations to ensure that Defendant provides accurate product descriptions.

18. The Injunction shall expire on (a) the date upon which there are changes to any applicable statute, regulation, or other law that Defendant reasonably believes would require a modification to any of the product labeling or advertising in order to comply with the applicable statute, regulation, or law; or (b) the date upon which there are any changes to any applicable federal or state statutes, regulations, laws, guidances, or pronouncements that would allow Defendant to label products that contain GMO, Synthetic Ingredients, and/or artificial flavors and ingredients as “Natural,” or phrases containing the word “Natural,” including but not limited to, changes in FDA, Federal Trade Commission, U.S. Department of Agriculture and other applicable government agencies’ regulations, guidances or pronouncements.

19. The Court finds that the Parties face significant risks, expenses, delays and uncertainties, including as to the outcome, including on appeal, of continued litigation of this complex matter, which further supports the Court’s finding that the Amended Settlement Agreement is fair, reasonable, adequate and in the best interests of the Settlement Class Members. The Court finds that the uncertainties of continued litigation in both the trial and appellate courts, as well as the tremendous expense associated with it, weigh in favor of approval of the Settlement reflected in the Amended Settlement Agreement.

20. The Court received no objections to the Amended Settlement Agreement, the request for an award of Attorneys’ Fees and Expenses, or the Service Awards, or the Motion for Final Approval of Class Action Settlement.

21. As of the Final Settlement Date, the Releasing Parties shall automatically be deemed to have fully and irrevocably released and forever discharged the Released Parties of and from any and all Released Claims, as defined in the Amended Settlement Agreement.

22. The Settlement Class Representatives and other Settlement Class Members shall be enjoined from prosecuting any claim they have released in the Amended Settlement Agreement and as set forth in the preceding paragraphs in any proceeding against any of the Released Parties or based on any actions taken by any of the Released Parties that are authorized or required by the Amended Settlement Agreement, this Final Order or by the Final Judgment. The Settlement may be pleaded as a complete defense to any proceeding subject to the releases set forth in the Amended Settlement Agreement and this Final Order and the Final Judgment.

23. This Final Order and the Final Judgment shall not be: (1) construed as an admission or concession by Defendant of the truth of any of the allegations in the Action, or of any liability, fault or wrongdoing of any kind; or (2) construed as an admission or concession by the Settlement Class Representatives or the Settlement Class Members as to any lack of merit of the claims or the Action.

24. The Amended Settlement Agreement shall not constitute and will not under any circumstances be deemed to constitute, an admission of wrongdoing or liability by any Party, such wrongdoing and liability being expressly denied, and no final adjudication having been made. The Parties have entered into the Amended Settlement Agreement solely as a compromise of all claims for the purpose of concluding the disputes between them, and the Amended Settlement Agreement may not be used by any third party against any Party. Pursuant to Federal Rule of Evidence 408 and any similar state rule, statute or common law, the entering into and carrying out of the Amended Settlement Agreement, and any negotiations or proceedings related to it, shall not be construed as, or deemed evidence of, an admission or concession by any of the Parties or a waiver of any applicable statute of limitations, and shall not be offered or received into evidence in any

action or proceeding against any Party in any court, administrative agency or other tribunal for any purpose whatsoever.

25. Notwithstanding the foregoing, nothing in this Final Order and the Final Judgment shall be interpreted to prohibit the use of this Final Order or the Final Judgment in a proceeding to consummate or enforce the Amended Settlement Agreement, the Final Order or the Final Judgment, or to defend against the assertion of Released Claims in any other proceeding, or as otherwise required by law.

26. At any time after entry of this Final Order and the Final Judgment, the Amended Settlement Agreement may, with approval of the Court, be modified by written agreement of Defense Counsel and Class Counsel in their discretion without giving any additional notice to the Settlement Class, provided that such modifications do not limit the rights of the Settlement Class Members under the Amended Settlement Agreement.

27. The Court hereby dismisses the Action on the merits and with prejudice, without fees, costs, or expenses to any Party except as provided in this Final Order, any other Order awarding fees, costs, or expenses, and the Final Judgment.

28. If the Final Settlement Date, as defined in the Amended Settlement Agreement, does not occur for any reason, the Notice Approval Order, this Final Order, and the Final Judgment shall be deemed vacated and shall have no force and effect whatsoever.

29. If the Amended Settlement Agreement is terminated, certification of the Settlement Class will be vacated, and the Parties will be returned to their positions *status quo ante* with respect to the Action as if the Settlement had not been entered into. In such event, the Amended Settlement Agreement and all negotiations, proceedings, documents prepared and statements made in connection therewith shall be without prejudice to the Parties, and shall not be deemed or construed

to be an admission or confession by or against any Party, individual, or entity of any fact, matter, or proposition of law, whether in the Action or otherwise.

30. Pursuant to the All Writs Act, 28 U.S.C. § 1651, this Court shall retain the authority to issue any Order necessary to protect its jurisdiction from any action, whether in state or federal court.

31. Without affecting the finality of this Final Order or the Final Judgment, the Court hereby retains and reserves jurisdiction over the subject matter and the Parties with respect to the interpretation and implementation of the Amended Settlement Agreement for all purposes, including: (a) to approve any amendments to the Amended Settlement Agreement, (b) pursuant to Fed. R. Civ. P. 54(d)(2), to hear and decide Class Counsel's Fee Motion on November 15, 2022, or to continue or adjourn such hearing, (c) to determine the need for and direct a Second-Round Distribution, if any, (d) to determine and direct a *cy pres* award, if any, (e) to enforce any of the Amended Settlement Agreement's terms at the request of any Party, (f) to resolve any disputes that may arise relating in any way to, or arising from, the implementation of the Amended Settlement Agreement or the implementation of this Final Order and the Final Judgment and any distributions from the Settlement Fund, and (g) to oversee the Action until each and every act to be performed by the Parties shall have been performed pursuant to the terms and conditions of this Final Order, any other Order of the Court, the Final Judgment and the Amended Settlement Agreement, including the exhibits appended thereto.

32. Pursuant to Federal Rule of Civil Procedure 54(b), the Court determines that there is no just reason for delay and expressly DIRECTS that this Final Order be, and hereby is, entered as a final and appealable order.

IT IS SO ORDERED.

Dated: May 27, 2022

/s/ *Douglas P. Woodlock*
DOUGLAS P. WOODLOCK
UNITED STATES DISTRICT JUDGE