

EXHIBIT 1

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Mark C. Goodman, State Bar No. 154692
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Attorneys for Defendant
BIMBO BAKERIES USA, INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

ALEX ANG and LYNN STREIT, individually
and on behalf of all others similarly situated,

Plaintiffs,

v.

BIMBO BAKERIES USA, INC.,

Defendant.

Case No. 13-CV-01196-HSG

**DECLARATION OF ANNE KELTS
ASSAYAG IN SUPPORT OF MOTION
FOR FINAL APPROVAL OF CLASS
ACTION SETTLEMENT**

Date of Final Class Settlement Approval
Hearing: August 27, 2020
Time: 2:00 p.m.
Crtrm.: 2, 4th Floor
Before: Hon. Haywood S. Gilliam, Jr.

1 I, Anne Kelts Assayag, declare as follows:

2 1. I am an attorney admitted to practice law in the State of California. I am an associate
3 with Baker McKenzie, counsel of record for Defendant Bimbo Bakeries USA, Inc. (“BBUSA”) in
4 this matter. I make this declaration based on my personal knowledge and, if called as a witness, I
5 could and would testify competently to the facts stated herein.

6 2. I make this declaration in support of the parties’ Joint Motion for Final Approval of
7 Class Action Settlement.

8 3. Attached hereto as **Exhibit A** is a true and correct copy of the notice letter sent to the
9 United States Attorney General’s Office on BBUSA’s behalf pursuant to the Class Action Fairness
10 Act (CAFA). *See* 28 U.S.C. § 1715.

11 4. Attached hereto as **Exhibit B** is a true and correct copy of the CAFA notice letter sent
12 to the California Attorney General’s Office on BBUSA’s behalf.

13 5. On May 13, 2020, I instructed staff in my office to print Exhibits A and B and send
14 the correspondence, along with enclosures of the relevant case documents, by FedEx to the intended
15 recipients. After we sent the documents, we received FedEx delivery confirmations for each of the
16 mailings.

17
18 I declare under the penalty of perjury under the laws of the State of California that the
19 forgoing is true and correct. Executed this 17th day of June 2020 in San Francisco, California.

20
21 

22 Anne Kelts Assayag

EXHIBIT A



Baker & McKenzie LLP

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* Associated Firm
** In cooperation with
Trench, Rossi e Watanabe
Advogados

May 13, 2020

U.S. Department of Justice
Office of the Attorney General
Civil Division, Consumer Protection Branch
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

By FedEx

RE: Notice of Proposed Class Action Settlement (28 U.S.C. § 1715) in *Ang v. Bimbo Bakeries USA, Inc.*, Case No. 13-CV-01196-HSG-NC (N.D. Cal.)

To Whom It May Concern:

The undersigned represents Bimbo Bakeries USA, Inc. (“BBUSA”), the defendant in the above-referenced litigation pending in the United States District Court for the Northern District of California before the Honorable Haywood S. Gilliam (the “Class Action”). In compliance with the Class Action Fairness Act of 2005 (“CAFA”), 28 U.S.C. § 1715, BBUSA hereby provides notice that a proposed settlement of the Class Action has been filed with and preliminarily approved by Judge Gilliam.

The Class Action asserts claims relating to allegedly misleading labeling statements on certain BBUSA products. BBUSA denies all of these claims but has agreed to settle the Class Action to avoid the expenses, uncertainties, delays and other risks inherent in further litigation. The proposed settlement class consists of all persons or entities that made purchases in California of any BBUSA products identified in the Court’s August 31, 2018 Order Granting in Part and Denying in Part Motion for Class Certification (the “Class Certification Order”). The Class Certification Order granted class certification of the plaintiffs’ injunctive relief claims under Federal Rule of Civil Procedure 23(b)(2) but denied class certification on damages under Rule 23(b)(3). Therefore, the proposed settlement provides only injunctive relief on a class-wide basis.

Enclosed Copies Of Materials Required Under CAFA

As required by 28 U.S.C. § 1715(b), please find enclosed the following materials relating to the proposed settlement:

1. Plaintiffs’ Second Amended Complaint (Dkt. 40), which is the operative complaint in the Class Action;
2. August 31, 2018 Class Certification Order (Dkt. 186);
3. Joint Motion for Preliminary Approval of Proposed Class Action Settlement (the “Motion”) (Dkt. 217) and the Declaration of Keith M. Fleischman in support of the



Motion (Dkt. 217-1), attaching the Class Settlement Agreement and Release dated December 10, 2019 (Dkt. 217-2) and the [Proposed] Order Granting Preliminary Approval of Proposed Class Action Settlement (Dkt. 217-3);

4. February 13, 2020 Minute Order instructing the parties to file a joint statement in support of the Motion by February 20 (Dkt. 221);
5. Joint Statement in Support of Preliminary Approval of Class Action Settlement (Dkt. 222), attaching the parties' Revised Settlement Agreement (Dkt. 222-1) and a redline of the Revised Settlement Agreement (Dkt. 222-2);
6. February 25, 2020 Order Directing Supplemental Filing in Support of Motion for Preliminary Approval (Dkt. 223);
7. Supplemental Joint Statement in Support of Preliminary Approval of Class Action Settlement (Dkt. 226);
8. Proposed Notice Plan in Support of Preliminary Approval of Class Action Settlement (Dkt. 231);
9. Order Denying Motion for Preliminary Approval of Class Action Settlement (Dkt. 232);
10. Renewed Motion for Preliminary Approval of Class Action Settlement (Dkt. 235) and the Declaration of Joshua D. Glatter in support of the Motion (Dkt. 235-1), attaching the revised Class Settlement Agreement and Release (Dkt. 235-2) and the [Proposed] Order Granting Preliminary Approval of Proposed Class Action Settlement (Dkt. 235-3);
11. Order Granting Renewed Motion for Preliminary Approval of Class Action Settlement (Dkt. 236);
12. Stipulation and [Proposed] Order Re Deadlines in Support of Final Approval of Class Action Settlement (Dkt. 237); and
13. Court Order Granting Stipulation Re Deadlines in Support of Final Approval of Class Action Settlement (Dkt. 238).

Additional pleadings and case filings are electronically available and may be found on the "CM/ECF" online docket for the above-captioned case at <https://ecf.cand.uscourts.gov/cgi-bin/login.pl>.

Notification To Class Members

The parties have agreed to provide notice of the settlement to Class Members by posting notice language approved by the Court on BBUSA's and Class Counsel's public websites, along with relevant case documents. The specific notice language that will be included is set forth in the Renewed Motion for Preliminary Approval of Class Action Settlement (Dkt.



235). The parties have also agreed to issue a joint press release that is substantively similar to the proposed notice language. (*See id.*)

Because the proposed settlement provides only injunctive relief, the parties agree that there is no right to request exclusion from the settlement. *See* 28 U.S.C. § 1715(b)(3).

Reasonable Estimate Of The Number Of Class Members Residing In California

CAFA requires a defendant, “if feasible,” to provide “the names of class members who reside in each State and the estimated proportionate share of the claims of such members to the entire settlement” or, if that is not feasible, to provide a “reasonable estimate of the number of class members residing in each State and the estimated proportionate share of the claims of such members to the entire settlement.” 28 U.S.C. § 1715(b)(7)(A)-(B). Because BBUSA is a manufacturer whose products are sold exclusively through retailers, and not directly to purchasers, it is not feasible to provide the names of all class members who reside in California or to provide a reasonably accurate estimate of the proportionate share of the claims of such members to the entire settlement.

Although BBUSA maintains certain sales data, these data do not account for repeat purchasers or purchasers of multiple products. Furthermore, the settlement involves multiple products sold over the course of several years. Several of those products have been discontinued and, as to the remaining products, the formulations and labeling statements that were challenged in this case have been phased out and are no longer in use. Accordingly, based on currently available information, BBUSA cannot feasibly identify or provide a reasonable estimate of the number of class members. BBUSA’s best estimate is that there are tens of thousands of class members.

Further, there is no “estimated proportionate share of the claims of such members to the entire settlement” pursuant to section 1715(b)(7)(B) because there is no common fund or monetary relief provided pursuant to the settlement (and no putative class members are releasing any claims for damages).

Other Agreements

Pursuant to 28 U.S.C. § 1715(b)(5), the only “settlement or other agreement contemporaneously made between class counsel and counsel for” BBUSA is the Revised Settlement Agreement, which, by its express terms, supersedes any and all previous agreements and understandings between or among the parties relating to the Class Action or the subject matter of the Settlement Agreement.

Scheduled Judicial Hearings In The Class Action

The Court has scheduled a final approval hearing for August 27, 2020. *See* 28 U.S.C. § 1715(b)(2). Class members can object to the settlement on or before July 24, 2020. In the event the Court reschedules the final approval hearing, you may find this information by visiting the “CM/ECF” online docket for the above-captioned case at <https://ecf.cand.uscourts.gov/cgibin/login.pl>.



Written Judicial Opinions

Pursuant to 28 U.S.C. § 1715(b)(6), there has been no final judgment or notice of dismissal in this case. When the Court enters such orders, they may be found on the “CM/ECF” online docket for the above-captioned case at <https://ecf.cand.uscourts.gov/cgi-bin/login.pl>.

The enclosed contains copies of the Court Order Granting Renewed Motion for Preliminary Approval of Class Action Settlement (Dkt. 236), as well as other orders in the case relating to class certification, the filing of the settlement and scheduling of the final approval hearing. *See* 28 U.S.C. § 1715(b)(8).

Should you have any questions regarding this matter, please do not hesitate to contact me directly.

Sincerely,

A handwritten signature in blue ink, appearing to read "Mark C. Goodman".

Mark C. Goodman

Cc: Anne K. Assayag
Baker & McKenzie

EXHIBIT B



Baker & McKenzie LLP

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* Associated Firm
** In cooperation with
Trench, Rossi e Watanabe
Advogados

May 13, 2020

CAFA Coordinator
Office of the Attorney General
Consumer Law Section
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102

By FedEx

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Mark C. Goodman

Cc: Anne K. Assayag
Baker & McKenzie