

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

JAMES BOSWELL, MICHELLE
SALAZAR-NAVARRO, and JUNE KEEN
on behalf of themselves, all others similarly
situated and the general public,

Plaintiffs,

v.

COSTCO WHOLESALE CORPORATION
and LODC GROUP, LTD.,

Defendants.

Case No: 8:16-cv-00278-DOC-DFM

**ORDER GRANTING
PLAINTIFFS' MOTION FOR
PRELIMINARY APPROVAL OF
CLASS SETTLEMENT [111]**

Judge: Hon. David O. Carter

1 WHEREAS, the above-entitled action is pending before this Court (the “Action”);

2 WHEREAS, Plaintiffs James Boswell, Michelle Salazar-Navarro, and June Keen (the
3 “Plaintiffs”) having moved, pursuant to Federal Rule of Civil Procedure 23(e), for an order
4 approving the Settlement of this Action, in accordance with the Class Action Settlement
5 Agreement (the “Settlement Agreement”) attached as Exhibit 1, Dkt. No. 101-1, to the
6 Supplemental Declaration of Jack Fitzgerald in Support of Plaintiffs’ Motion for
7 Preliminary Approval of Class Settlement (the “Motion”), which Settlement Agreement sets
8 forth the terms and conditions for a proposed settlement of the Litigation;

9 WHEREAS, the Court, having read and considered the Settlement Agreement; heard
10 the argument of counsel at the hearings in this matter on June 12, July 24, and July 25,
11 2017; and considered the Motion (Dkt. Nos. 100-101), supplemental papers filed by
12 Plaintiffs on July 21, 2017 (Dkt. No. 108), and Plaintiffs’ Amended Motion for Preliminary
13 Approval filed on July 25, 2017 (Dkt. No. 111, the “Amended Motion”); and

14 WHEREAS, all defined terms herein have the same meanings as set forth in the
15 Settlement Agreement.

16 NOW, THEREFORE, IT IS HEREBY FOUND AND ORDERED:

17 1. This Court has jurisdiction over the subject matter of the Action and over all
18 Parties to the Action, including all members of the Settlement Class.

19 2. This Court does hereby preliminarily approve the Settlement Agreement and
20 the Settlement set forth therein, as fair, reasonable, and adequate to the Class, including
21 based upon the following considerations:

22 a. That the three plaintiffs will seek no more than \$4,000 in incentive
23 payments, and specifically no more than \$2,000 for Plaintiff James Boswell, and no
24 more than \$1,000 each for Plaintiffs Michelle Salazar-Navarro and June Keen;

25 b. That plaintiffs’ counsel will seek attorneys’ fees of no more than 25% of
26 the common fund (\$193,750), and that they will reduce their fee request in the event
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1 and to the extent that any amounts the Claim Administrator charges exceed \$400,000,
2 to effectively cap notice and administration costs at \$400,000; and

3 c. That any funds from uncashed checks remaining in the Common Fund
4 after claimants' checks have expired will be awarded *cy pres* to the American Heart
5 Association.

6 3. The Court finds on a preliminary basis that the Settlement as set forth in the
7 Settlement Agreement falls within the range of reasonableness and therefore meets the
8 requirements for preliminary approval.

9 4. The Court conditionally certifies, for settlement purposes only, a Class defined
10 as all persons in the United States who purchased, for personal or household use, Kirkland
11 Signature Organic Virgin Coconut Oil in 42.3-ounce jars. This product was available for
12 sale at Costco, in a single unit containing two jars, from approximately March 1, 2014 to
13 June 30, 2016.

14 5. The Court finds, for settlement purposes only, that class certification under
15 Federal Rule of Civil Procedure 23(b)(3) is appropriate in the settlement context because (a)
16 the Settlement Class Members are so numerous that joinder of all Settlement Class
17 Members is impracticable; (b) there are questions of law and fact common to the Settlement
18 Class which predominate over any individual questions; (c) the claims of the plaintiffs and
19 proposed Class Representatives are typical of the claims of the Settlement Class; (d) the
20 plaintiffs and proposed Class Representatives and their counsel will fairly and adequately
21 represent and protect the interests of the Settlement Class Members; (e) questions of law or
22 fact common to the Settlement Class Members predominate over any questions affecting
23 only individual the Settlement Class Members; and (f) a class action is superior to other
24 available methods for the fair and efficient adjudication of the controversy.

25 6. The Court appoints Plaintiffs James Boswell, Michelle Salazar-Navarro, and
26 June Keen as Class Representatives.

1 7. The Court appoints The Law Office of Paul K. Joseph, PC and The Law Office
2 of Jack Fitzgerald, PC as Class Counsel.

3 8. The Court finds that, subject to the Final Approval hearing, the Settlement
4 Agreement is fair, reasonable, adequate, and in the best interests of the Settlement Class.
5 The Court further finds that the Settlement Agreement substantially fulfills the purposes and
6 objectives of the class action and provides beneficial relief to the Settlement Class. The
7 Court also finds that the Settlement Agreement: (a) is the result of serious, informed, non-
8 collusive arms'-length negotiations, involving experienced counsel familiar with the legal
9 and factual issues of this case and made with the assistance and supervision of the Hon. Leo
10 Papas (Ret.); (b) meets all applicable requirements of law, including Federal Rule of Civil
11 Procedure 23, and the Class Action Fairness Act ("CAFA"), 28 U.S.C. § 1715.

12 9. The Court hereby approves the form and content of the Class Notice in the
13 form attached to the Settlement Agreement as Exhibits B (postcard), C (email), and D (long
14 form), except that these notices shall be amended to be consistent with Paragraph 2 herein
15 and update the business address of Costco's counsel. The Court finds that dissemination of
16 the Class Notice as proposed in the Settlement Agreement meets the requirements of
17 Federal Rule of Civil Procedure 23(c)(2), and due process, and further constitutes the best
18 notice practicable under the circumstances. Accordingly, the Court hereby approves the
19 Notice plan as set forth in Section V of the Settlement Agreement.

20 10. The Claim Administrator shall complete direct notice as set forth in the
21 Settlement Agreement within thirty (30) days following the date of this Order.

22 11. Class Members shall be permitted to make a claim or opt-out at any time
23 within 45 days following the date of this Order, at which time the claim and opt-out
24 deadline shall expire.

25 12. A hearing (the "Final Approval Hearing") shall be held before this Court on
26 _____, 2017, at ____ a.m. [October 17, 2017], in Courtroom 9D of the Ronald
27 Regan Federal Building, 411 West Fourth Street, Santa Ana, California, to determine
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1 whether the proposed settlement of the Action on the terms and conditions provided for in
2 the Settlement Agreement is fair, reasonable, and adequate to the Settlement Class and
3 should be finally approved by the Court; whether a Judgment as provided in the Settlement
4 Agreement should be entered; and to determine any amount of fees, costs, and expenses that
5 should be awarded to Class Counsel and any award to the Plaintiffs for their representation
6 of, or service on behalf of, the Settlement Class.

7 13. A motion in support of final approval of the settlement, and any applications
8 for attorneys' fees and costs and incentive awards, shall be filed and served no later than
9 twenty-eight (28) days prior to the Final Approval Hearing.

10 14. Any objections shall be filed and served no later than twenty-one (21) days
11 before the Final Approval Hearing.

12 15. The Parties may, but are not required to respond to any objections. Any
13 response to any objection must be filed and served no later than fourteen (14) days before
14 the Final Approval Hearing.

15 16. The Court reserves the right to adjourn the date of the Final Approval Hearing
16 without further notice to the members of the Settlement Class, and retains jurisdiction to
17 consider all further applications arising out of or connected with the proposed settlement.
18 The Court may approve the settlement, with such modifications as may be agreed to by the
19 settling Parties, if appropriate, without further notice to the Settlement Class.

20 17. All discovery and proceedings in this Action are stayed until further order of
21 this Court, except as may be necessary to implement the settlement or comply with the
22 terms of the Settlement Agreement.

23 18. By entering this order, the Court does not make any determination as to the
24 merits of this case. Preliminary approval of the Settlement Agreement is not a finding or
25 admission of liability by Defendants.

1 19. The Court retains jurisdiction over the Action to consider all further matters
2 arising out of or connected with the Settlement Agreement and the settlement described
3 therein.

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5 **IT IS SO ORDERED.**

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7 Dated: July 26, 2017

David O. Carter

Hon. David O. Carter
United States District Court Judge