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11 **UNITED STATES DISTRICT COURT**  
12 **NORTHERN DISTRICT OF CALIFORNIA**

13 RICHARD W. TRAMMELL,

14 Plaintiff,

15 v.

16 BARBARA'S BAKERY, INC., *et al.*,

17 Defendants.  
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Case No. 3:12-cv-02664-CRB

**FINAL ORDER APPROVING CLASS ACTION  
SETTLEMENT**

Honorable Charles R. Breyer, Presiding

1 This motion for final approval, having been brought before the Court jointly by the Parties, the  
 2 Parties having entered into a Settlement Agreement, with its attached exhibits, (collectively, the  
 3 “Settlement Agreement”), signed and filed with this Court on April 25, 2013, 2013, to settle *Trammell*  
 4 *v. Barbara’s Bakery, Inc.*, No. 3:12-cv-02664-CRB (the “Action”); and

5 The Court having entered an Order dated June 26, 2013 (the “Preliminary Approval Order”),  
 6 preliminarily certifying the putative class in this action for settlement purposes only under Fed. R. Civ.  
 7 P. 23(a) and (b)(3), ordering individual and publication notice to potential Class Members, scheduling  
 8 a Fairness Hearing for November 8, 2013, providing potential Class Members with an opportunity  
 9 either to exclude themselves from the Settlement Class or to object to the proposed settlement and  
 10 issuing related Orders; and the Court having held a Fairness Hearing on November 8, 2013 to  
 11 determine whether to grant final approval of the proposed settlement and issue related relief; and

12 The Court having considered the papers submitted by the Parties and by all other persons who  
 13 timely submitted papers in accordance with the Preliminary Approval Order, and having heard oral  
 14 presentations by the Parties and all persons who complied with the Preliminary Approval Order, and  
 15 based on all of the foregoing, together with this Court’s familiarity with the Action, it is hereby

16 **ORDERED, ADJUDGED, AND DECREED** as follows:

17 1. **Incorporation of Other Documents.** This Final Order Approving Class Action  
 18 Settlement incorporates and makes a part hereof: (a) the Settlement Agreement, including all  
 19 amendments and exhibits thereto, and definitions included therein, which was signed and filed with  
 20 this Court on April 25, 2013; (b) the briefs, affidavits, declarations, and other materials filed in support  
 21 of the settlement and Class Counsel’s request for an award of attorneys’ fees and reimbursement of  
 22 expenses; (c) the record at the Fairness Hearing; (d) the documents listed on the docket sheet or  
 23 otherwise submitted to the Court; and (e) all prior proceedings in the Action.

24 2. **Jurisdiction.** Because due, adequate, and the best practicable notice has been  
 25 disseminated and all potential Class Members have been given the opportunity to exclude themselves  
 26 from or object to this class action settlement, the Court has personal jurisdiction over all Class  
 27 Members (as defined below). The Court has subject-matter jurisdiction over the claims asserted in the  
 28 complaint and/or the Action pursuant to 28 U.S.C. §§ 1332 and 1367, including, without limitation,

jurisdiction to approve the proposed settlement and the Settlement Agreement and all exhibits attached thereto, grant final certification to the Class, dismiss the Action on the merits and with prejudice, and issue related orders. The Court finds that venue is proper in this district pursuant to 28 U.S.C. § 1391.

3. **Final Class Certification.** The Class preliminarily certified by this Court is hereby finally certified for settlement purposes only under Fed. R. Civ. P. 23(a), (b)(3), and (c)(2), the Court finding that the Class fully satisfies all the applicable requirements of Fed. R. Civ. P. 23 and due process. The Class shall consist of all persons who, during the Class Period, May 23, 2008 to July 5, 2013, purchased in the United States any Eligible Products (as this term is defined in the Settlement Agreement). Excluded from the Class are: (a) Barbara's Bakery board members or executive-level officers, including its attorneys; (b) persons who purchased the Eligible Products primarily for the purpose of resale; (c) retailers or re-sellers of the Eligible Products; (d) governmental entities; (e) persons who timely and properly exclude themselves from the Class as provided in the Agreement; (f) persons who purchased the Eligible Products via the Internet or other remote means while not residing in the United States; and (g) the Court, the Court's immediate family, and Court staff.

4. **Requests for Exclusion.** The Court finds that only those individuals specifically listed in Exhibit A to the Declaration of April Hyduk and filed with the Court, and no other member of the Class, have submitted timely and valid requests for exclusion from the Class and are therefore not bound by this Final Order and accompanying Final Judgment. Attached hereto as Exhibit A is the list of individuals who submitted timely and valid requests for exclusion from the Class and are therefore not bound by this Final Order and accompanying Final Judgment. All other members of the Class are bound by the terms and conditions of the Settlement Agreement, this Final Order, and accompanying Final Judgment. Class Counsel and Barbara's Bakery's Counsel may mutually agree to allow additional Class Members to exclude themselves or to withdraw their exclusion requests by filing an appropriate notice with the Court.

5. **Adequacy of Representation.** Class Plaintiff Richard W. Trammell has adequately represented the Settlement Class for purposes of entering into and implementing the Settlement. Tina Wolfson and Robert Ahdoot, of Ahdoot & Wolfson, PC, are experienced and adequate Class Counsel. Class Plaintiff and Class Counsel have satisfied the requirements of Fed. R. Civ. P. 23(a)(4) and 23(g).

1           6.     **Class Notice.** The Court finds that the dissemination of the Class Notice, the  
 2 publication of the Summary Settlement Notice, the establishment of a website containing settlement-  
 3 related materials, the establishment of a toll-free telephone number, and all other notice methods set  
 4 forth in the Settlement Agreement and the Notice Administrator's Declaration and the notice  
 5 dissemination methodology implemented pursuant to the Settlement Agreement and this Court's  
 6 Preliminary Approval Order, as described in the Notice Administrator's Declaration, a copy of which  
 7 is incorporated herein and made a part hereof:

8                 a.     constituted the best practicable notice to Class Members under the  
 9 circumstances of the Action;

10                b.     constituted notice that was reasonably calculated, under the circumstances, to  
 11 apprise Class Members of (i) the pendency of this action; (ii) the terms of the proposed settlement; (iii)  
 12 their rights under the proposed settlement; (iv) their right to exclude themselves from the Class and the  
 13 proposed settlement; (v) their right to object to any aspect of the proposed settlement (including, but  
 14 not limited to, final certification of the Settlement Class, the fairness, reasonableness, or adequacy of  
 15 the proposed settlement, the adequacy of the Class's representation by Plaintiff or Class Counsel,  
 16 and/or the award of attorneys' fees); (vi) their right to appear at the Fairness Hearing – either on their  
 17 own or through counsel hired at their own expense – if they did not exclude themselves from the  
 18 Class; and (vii) the binding effect of the Orders and Judgment in this action, whether favorable or  
 19 unfavorable, on all persons who did not request exclusion from the Class;

20                c.     constituted notice that was reasonable, due, adequate, and sufficient notice to all  
 21 persons and entities entitled to be provided with notice; and

22                d.     constituted notice that met all applicable requirements of the Federal Rules of  
 23 Civil Procedure, 28 U.S.C. §1715, the Due Process Clause of the United States Constitution, and any  
 24 other applicable law, as well as complied with the Federal Judicial Center's illustrative class action  
 25 notices.

26           7.     **Final Settlement Approval.** The terms and provisions of the proposed settlement and  
 27 Settlement Agreement, including all exhibits, have been entered into in good faith and are hereby fully  
 28 and finally approved as fair, reasonable, and adequate as to, and in the best interests of, each of the

1 Parties and the Class Members, and in full compliance with all applicable requirements of the Federal  
2 Rules of Civil Procedure, the Class Action Fairness Act (P.L. 109-2), the United States Constitution  
3 (including the Due Process Clause), and any other applicable law. The settlement is approved and all  
4 objections to the settlement are overruled as without merit. The Parties and Class Members are hereby  
5 directed to implement and consummate the Settlement Agreement according to its terms and  
6 provisions. Class Counsel shall take all steps necessary and appropriate to provide Class Members  
7 with the benefits to which they are entitled under the terms of the Settlement Agreement.

8 8. **Early Implementation.** Barbara's Bakery and Class Counsel are hereby authorized,  
9 and without requiring further approval of this Court, to implement the settlement before the Final  
10 Settlement Date (as defined in the Settlement Agreement), in which case all provisions of the  
11 Settlement Agreement specifying actions to be taken on or after the Final Settlement Date shall, to the  
12 extent necessary, be deemed to provide that those actions shall be taken on or after the date the Parties  
13 elect to implement the settlement.

14 9. **Binding Effect.** The terms of the Settlement Agreement and of this Final Order and  
15 the accompanying Final Judgment shall be forever binding on Plaintiff, Barbara's Bakery, and all  
16 Class Members, as well as their heirs, executors and administrators, predecessors, successors and  
17 assigns, and those terms shall have *res judicata* and other preclusive effect in all pending and future  
18 claims, lawsuits, or other proceedings maintained by or on behalf of any such persons, to the extent  
19 those claims, lawsuits, or other proceedings involve matters that were or could have been raised in the  
20 Action or are otherwise encompassed by the Release.

21 10. **Release.** The Release, which is set forth in Section VIII of the Settlement Agreement,  
22 is expressly incorporated herein in all respects, including all defined terms used therein, is effective as  
23 of the date of this Final Order and the accompanying Final Judgment, and forever discharges the  
24 Released Parties from any claims or liabilities arising from or related to the Release.

25 11. **Permanent Injunction.** All Class Members and/or their representatives who have not  
26 been timely excluded from the Class are hereby permanently barred and enjoined from bringing,  
27 filing, commencing, prosecuting, maintaining, intervening in, participating in, continuing, or receiving  
28 any benefits from, as class members or otherwise, any lawsuit (including putative class actions),

1 arbitration, administrative, regulatory, or other proceeding in any jurisdiction that is covered by the  
2 Release. All Class Members and all persons in active concert or participation with Class Members are  
3 permanently barred and enjoined from organizing or soliciting the participation of any Class Members  
4 who did not timely exclude themselves from the Class into a separate class or group for purposes of  
5 pursuing a putative class action, any claim, or lawsuit in any jurisdiction that is covered by the  
6 Release. Pursuant to 28 U.S.C. §§1651(a) and 2283, the Court finds that issuance of this permanent  
7 injunction is necessary and appropriate in aid of the Court's continuing jurisdiction and authority over  
8 the Action.

9 12. **Enforcement of Settlement.** Nothing in this Final Order or in the accompanying Final  
10 Judgment shall preclude any action to enforce the terms of the Settlement Agreement; nor shall  
11 anything in this Final Order or in the accompanying Final Judgment preclude Plaintiff or other Class  
12 Members from participating in the Claim Process described in the Settlement Agreement if they are  
13 entitled to do so under the terms of the Settlement Agreement.

14 13. **Attorneys' Fees and Expenses.** Class Counsel are hereby awarded attorneys' fees and  
15 reimbursement of their disbursements and expenses in the amount of \$ 1,000,000., which amount is  
16 approved as fair and reasonable, pursuant to Fed. R. Civ. P. 23(h) and is in accordance with the terms  
17 of the Settlement Agreement. The Court finds that the above stated award of attorneys' fees is fair and  
18 reasonable in consideration of, among other things, the efforts of Class Counsel and the settlement  
19 they achieved for the Class, and that the amount of expenses is reasonable and were reasonably  
20 incurred in the course of the litigation. Class Counsel, in their discretion, shall allocate and distribute  
21 this award of attorneys' fees and expenses among Plaintiff's Counsel. All objections to Class  
22 Counsel's request for an award of attorneys' fees and reimbursement of expenses are hereby  
23 overruled.

24 14. **Incentive Award.** The Court hereby awards \$2,500. to Plaintiff Richard W. Trammell  
25 as an incentive award in his capacity as a representative Plaintiff in the Action.

26 15. **No Other Payments.** The preceding two paragraphs of this Final Order cover, without  
27 limitation, any and all claims against the Released Parties for attorneys' fees and expenses, costs, or  
28 disbursements incurred by Class Counsel or any other counsel representing Plaintiff or Class

Members, or incurred by Plaintiff or the Class Members, or any of them, in connection with or related in any manner to the Action, the settlement of the Action, the administration of such settlement, and/or the Release, except to the extent otherwise specified in this Final Order and accompanying Final Judgment and the Settlement Agreement. Plaintiff is not precluded from seeking attorneys' fees, expenses, costs, or disbursements from an objecting Class Member or his or her counsel (and not Barbara's Bakery or its counsel) in connection with an appeal filed by an objecting Class Member.

16. **Modification of Settlement Agreement.** The Parties are hereby authorized, without needing further approval from the Court, to agree to and adopt such amendments to, and modifications and expansions of, the Settlement Agreement, and all exhibits attached, as are consistent with this Final Order and the accompanying Final Judgment and do not limit the rights of Class Members under the Settlement Agreement.

17. **Retention of Jurisdiction.** The Court has jurisdiction to enter this Final Order and the accompanying Final Judgment. Without in any way affecting the finality of this Final Order and/or the accompanying Final Judgment, this Court expressly retains jurisdiction as to all matters relating to the administration, consummation, enforcement, and interpretation of the Settlement Agreement and of this Final Order and the accompanying Final Judgment, and for any other necessary purpose, including, without limitation:

a. enforcing the terms and conditions of the Settlement Agreement and resolving any disputes, claims, or causes of action that, in whole or in part, are related to or arise out of the Settlement Agreement, this Final Order, or the accompanying Final Judgment (including, without limitation, whether a person or entity is or is not a Class Member and whether claims or causes of action allegedly related to this case are or are not barred by this Final Order and the accompanying Final Judgment);


b. entering such additional Orders as may be necessary or appropriate to protect or effectuate this Final Order and the accompanying Final Judgment, dismissing all claims on the merits and with prejudice, and permanently enjoining Class Members from initiating or pursuing related proceedings, or to ensure the fair and orderly administration of this settlement; and

c. entering any other necessary or appropriate Orders to protect and effectuate this Court's retention of continuing jurisdiction; provided, however, that nothing in this paragraph is intended to restrict the ability of the Parties to exercise their rights under paragraphs 8 and 16 or as otherwise provided in the Settlement Agreement.

18. **No Admissions.** Neither this Final Order, the accompanying Final Judgment, nor the Settlement Agreement (nor any other document referred to herein, nor any action taken to carry out this Final Order or the accompanying Final Judgment) is, may be construed as, or may be used as an admission or concession by or against Barbara's Bakery or the Released Parties of the validity of any claim or defense or any actual or potential fault, wrongdoing, or liability whatsoever Barbara's Bakery continues to deny that the Action meets the requisites for class certification under Fed. R. Civ. P. 23 for any purpose other than settlement. Entering into or carrying out the Settlement Agreement, and any negotiations or proceedings related to it, shall not in any event be construed as, or deemed evidence of, an admission or concession as to Barbara's Bakery's denials or defenses and shall not be offered or received in evidence in any action or proceeding against any Party hereto in any court, administrative agency, or other tribunal for any purpose whatsoever, except as evidence of the settlement or to enforce the provisions of this Final Order, the accompanying Final Judgment, and the Settlement Agreement; provided, however, that this Final Order, the accompanying Final Judgment, and the Settlement Agreement may be filed in any action against or by Barbara's Bakery or the Released Parties to support a defense of *res judicata*, collateral estoppel, release, waiver, good-faith settlement, judgment bar or reduction, full faith and credit, or any other theory of claim preclusion, issue preclusion, similar defense, or counterclaim.

19. **Dismissal of Action.** The Action (including all individual and Class claims presented therein) are hereby dismissed on the merits and with prejudice, without fees or costs to any Party except as otherwise provided in this Order and the accompanying Final Judgment and the Settlement Agreement.

November 8, 2013

  
Honorable Charles R. Breyer  
UNITED STATES DISTRICT JUDGE



**Exhibit A**

**List of persons who Requested Exclusion**

1. Michael Powers
2. Joe Jones
3. Erin Silber
4. Gabriel Rojas